Massillon Newspapers, Inc. d/b/a The Independent *and* Cleveland Newspaper Guild Local 1, a/w The Newspaper Guild, AFL–CIO, CLC. Cases 8–CA–24395, 8–CA–24771, 8–CA–25050, and 8–CA–25153

October 19, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On December 13, 1993, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent, Charging Party, and Acting General Counsel filed exceptions, supporting briefs, and answering briefs. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

1. We find merit to the Respondent's exception to the judge's finding that it constructively discharged Melanie Matthews and Carol Rohr. We find that this matter was not alleged in the complaint and was not litigated.

The underlying unfair labor practice charge alleged that the Respondent violated Section 8(a)(1) and (3) of the Act by discriminatorily disciplining and constructively discharging Matthews and Rohr. After investigating this allegation, the Regional Director notified the Respondent by letter of July 21, 1992, that there was insufficient evidence to support the constructive discharge allegation and refused to issue a complaint. Accordingly, the complaint alleges only that the Respondent discriminatorily disciplined Matthews and Rohr because they had engaged in concerted activities and to discourage them from engaging in such activities. Moreover, at the hearing the General Counsel did not attempt specifically to amend the complaint to include a constructive discharge allegation. At the close of the hearing, the General Counsel made a general motion to conform the pleadings to the proof.

Under these circumstances, we agree with the Respondent that the General Counsel's motion to conform the pleadings to the proof, at the end of the hearing, was insufficient to put the Respondent on notice that the separate issue of constructive discharge—an issue affirmatively excluded from the complaint by the Regional Director—needed to be addressed and litigated. It is of no significance, therefore, that record evidence bearing on other allegations of the complaint might also be relevant to the issue of constructive discharge.

In light of the above, we find that the issue of the Respondent's purported constructive discharge of Matthews and Rohr is not properly before the Board, and

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also has excepted to the judge's decision, asserting that it evidences bias and prejudice. On our full consideration of the entire record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in his analysis and discussion of the evidence.

The General Counsel has excepted to the judge's failure to find that the Respondent violated Sec. 8(a)(1) by: (1) antiunion activist Rebecca Thompson's December 19, 1991 statement, set out in sec. II,C,1 of the judge's decision, which allegedly conveyed to employees the impression that it would be futile to believe that the Respondent would agree to or abide by a collective-bargaining agreement; and (2) the conduct of Supervisor Inzetta on December 20, 1991, which allegedly created the impression of surveillance of employees' protected concerted activities. We find it unnecessary to pass on these matters because they would be cumulative and would not affect the remedy.

In sec. II,F,4 of his decision, the judge dismissed the allegation that the Respondent violated Sec. 8(a)(1) and (3) by disciplining photographer Prusha. He found no prima facie case that Prusha's union support was a motivating factor in the discipline. Contrary to the judge, we find sufficient evidence in the record to support an inference that Prusha's union support was a motivating factor. However, we find that the Respondent has shown that it would have disciplined Prusha, even in the absence of his union activities. Accordingly, we adopt the judge's dismissal of this allegation of the complaint. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Members Cohen and Truesdale do not find that the Respondent's counsel, Jon C. Flinker, abused the Board's processes by litigating the supervisory status of Circulation Director Eugene John. Although the Respondent's answer of July 10, 1992, admitted that John was a supervisor, the Respondent amended the answer on March 10, 1993, to deny that John was a supervisor. Inasmuch as this amendment occurred prior to the hearing, the Respondent had a right to amend. See Sec. 102.33 of the Rules. In addition, since the burden of proof is on the party asserting supervisory status, and inasmuch as the General Counsel has the burden of proving the violation, the Respondent was within its rights to put the General Counsel to his proof.

Member Browning agrees with the judge, for the reasons that he fully explicated in sec. II,C,4,c,(3) of his decision, that the continued litigation of John's supervisory status by the Respondent's counsel, after the Respondent had unequivocally admitted that John is a supervisor, was frivolous and in bad faith, that it unduly prolonged the trial, and that it was an abuse of Board processes. She strongly disapproves of such conduct by Flinker and believes that he should be warned against similar conduct in future appearances before the Board.

[2] The judge found, and we agree, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by unilaterally granting a general wage increase on March 30, 1992. We grant the General Counsel's exception to the judge's failure to find that the announcement of this increase to employees on March 23 independently violated Sec. 8(a)(1). We have provided a remedy for this violation.

we reverse the judge's finding that the Respondent violated Section 8(a)(3) in that respect. See *Coppinger Machinery Service*, 279 NLRB 609 (1986).

2. The General Counsel and the Charging Party except to the judge's failure to find that Circulation Marketing Director Michael Gorsich engaged in surveillance and created the impression of surveillance of employees who participated in a prounion rally across the street from the Respondent's premises about March 27, 1992. We find merit to the exceptions.

Reporter/editor Marla Fox testified that she attended an editorial staff meeting at which Editor Jim Davis stated that a union rally was scheduled for March 27 and that he ''would take it personally if any of us attended that rally.''[3] On the afternoon of the rally, the Respondent closed its facility at 2 p.m. and instructed employees to ''stay away'' until 5 p.m. The Respondent contends that it closed the building to maintain order and safety, because it expected up to 10,000 people at the rally, based on the sponsor's parade permit. In fact, the rally attracted only 50 to 60 participants.

Editor Davis assigned photographer (and bargaining unit employee) Tom Prusha to cover the rally as a news story. Prusha testified that, during the rally, Circulation Marketing Director Gorsich stood on the roof of the Respondent's facility and photographed the union supporters.[4] When Prusha developed his news-oriented photographs and delivered them to Davis, Prusha observed Davis, the Respondent's counsel, Tannler, and others watching a videotape of the rally and making joking remarks. Shortly thereafter, Gorsich asked Prusha to develop a roll of still film that Gorsich had taken and to provide 8-by-10 inch enlargements of each frame. According to Prusha, the pictures showed people at the rally and automobiles parked at the rally location. The automobile license numbers were clearly visible in some of the enlargements.

The judge found that the rally was a newsworthy event. He also found that there had been some ''unexplained vandalism'' at the Respondent's plant, justifying Gorsich's ''video pictures.'' Accordingly, the judge concluded that there was no violation of the Act. We disagree, because we find that the Respondent's asserted justification does not satisfactorily explain the amount and scope of its photographic activities on the day of the rally and the aftermath.

In its reply brief the Respondent advances the same explanations for photographing the rally—the newsworthiness of the rally, and the need to ensure safety and obtain evidence in case of future legal proceedings. As to the latter, the Respondent continues to rely on the judge's finding that ''there had been *unexplained* vandalism at the plant'' (emphasis added). It appears that the alleged threats, harassment, and vandalism were directed almost exclusively at antiunion activist Rebecca Thompson. Contrary to the judge, we find the Respondent's contentions unpersuasive.

The alleged acts of vandalism remained ''unexplained'' at the close of the hearing, as the judge found. There is no evidence that any ''unexplained'' vandalism that may have occurred was attributable to the Charging Party. Thompson's testimony in this respect was equivocal, at best.[5] It is unclear whether and to what extent she reported the alleged threats and harassment to the Respondent or the police. The Respondent's asserted safety and legal concerns seem exaggerated, as well, on the record before us. There were no threats of violence or actual violence in conjunction with the rally, which was entirely peaceful. Moreover, on the afternoon of the rally, the Respondent had sent all employees home and, by its own admission, hired additional police protection.

The prounion rally was newsworthy, and the Respondent did publish a news article and an accompanying photograph of the rally. We find, however, that the extensive nature of the photography, the productions of enlargements from which individuals or the automobiles at the rally could be identified, and the manner of review of the videotape by the Respondent had a purpose beyond the merely reportorial. We have carefully examined photographer Prusha's detailed testimony regarding other photographic assignments,[6] and we find, based on that evidence, that the photographic record of the rally obtained by Davis and Gorsich was substantially in excess of what would normally be produced for a news story of generally the same importance. In particular, we find it likely, under the circumstances, that the real purpose of the enlargements, ordered by Gorsich, of photographs that identify rally participants and cars, with legible license plates, parked near the rally, was to identify union supporters.

We find that the Respondent intended to use its photography of the rally to monitor the union activities of its employees and that its conduct reasonably tended to coerce and intimidate employees in the exercise of their right to show their union support. We find, therefore, that the Respondent's conduct in photographing

[3] Reporter Roland Dreussi, who also attended the meeting, corroborated this testimony. Dreussi also testified that, at around the same time, City Editor Kevin Coffey made a similar remark. Coffey denied making the remark. The judge did not resolve this credibility conflict, and we need not do so in view of the corroborated and uncontradicted testimony regarding Editor Davis. Davis did not testify.

[4] Although it is not entirely clear, it appears that Gorsich also created the videotape of the rally, referred to in the judge's decision.

[5] We note that the judge generally discredited Thompson's testimony throughout the hearing based on her demeanor and on her ''[apparent willingness] to fabricate any testimony that might help the Company's cause.''

[6] The Respondent's contention that some of Prusha's photographs were of an unsatisfactory quality does not render unreliable Prusha's general testimony regarding the methods he used to perform his assignments.

the rally created the impression of surveillance and, in fact, constituted surveillance of employees in the exercise of their Section 7 rights and violated Section 8(a)(1).

3. We affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by engaging in bad-faith bargaining, withdrawing recognition from the Union, and repudiating the terms and conditions of the expired collective-bargaining agreement. We also adopt his recommended remedy ordering the Respondent to bargain with the Union, on request, and to reinstate, for purposes of good-faith bargaining for a successor agreement, the tentative agreements reached December 4, 1991, on conditions of employment.[7] The judge found that these tentative agreements included Guild shop and dues-deduction provisions,[8] a supplemental health insurance provision, and a $2-deductible prescription drug program.

The Charging Party and the General Counsel have excepted to several omissions from the judge's recommended remedy. They contend, and we agree, that in addition to the other remedial provisions, the judge also should have directed the Respondent to rescind its repudiation of the expired collective-bargaining agreement and to restore terms and conditions of employment that were unlawfully repudiated until a successor agreement is reached. We grant this exception, except that we shall order the Respondent to restore the unlawfully repudiated terms and conditions of employment until a successor agreement is reached or the parties reach a lawful impasse in bargaining.

The Charging Party also has excepted to the judge's failure to find that the parties' December 4 tentative agreements included an agreement that a successor contract would be for a term of 3 years, and to order that this alleged additional tentative agreement be reinstated for purposes of good-faith bargaining. It relies on the testimony of Hannah Jo Rayl and Marla Fox. The Respondent contends that no such agreement had been reached, relying on evidence given by Michael Tannler, Rayl, Fox, and Rollie Dreussi. The judge did not resolve this credibility dispute or decide the issue.

Consequently, we shall sever this matter from the case and remand it to the administrative law judge solely for the purpose of resolving the credibility conflict and making findings and recommendations on the existing record.[9]

AMENDED CONCLUSIONS OF LAW

Add the following new conclusion of law and renumber the subsequent conclusions of the administrative law judge.

''5. By announcing on about March 23, 1992, that it would grant a unilateral general wage increase to employees, the Respondent violated Section 8(a)(1).''

ORDER

The Respondent, Massillon Newspapers, Inc. d/b/a The Independent, Massillon, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting, assisting, condoning, or encouraging the circulation or signing of any petition or letter opposing the Cleveland Newspaper Guild Local 1, a/w The Newspaper Guild, AFL–CIO, CLC.

(b) Coercively interrogating any employee about signing an antiunion petition, or requiring any employee to reveal the employee's support of or opposition to the Union.

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[7] At least some of the tentative agreements had been reached earlier during the parties' prolonged collective-bargaining negotiations. We find that the Respondent's bargaining agent, Tannler, reaffirmed the tentative agreements on December 4, 1991, when the parties successfully concluded negotiations on noneconomic issues and memorialized their tentative agreements in a written document the next day.

To remedy the Respondent's bad-faith bargaining, Member Browning would also order the Respondent to reimburse the Union for its negotiating expenses incurred after December 4, 1991. She finds that bargaining became a sham after that date when, despite the existing agreement on noneconomic issues, the Respondent's publisher, Jack Shores, threatened to delay the promised negotiations on economic issues until it determined whether the Union still had the support of a majority of the unit employees. She particularly agrees with the judge's finding, in sec. II,D,3 of his decision, that the Respondent had no intention of bargaining in good faith and reaching an agreement with the Union, but instead was using Attorney Flinker's negotiations merely as a delaying tactic until the Respondent could finish unlawfully inducing enough employees to join its campaign to get rid of the Union. Thus, Member Browning would hold the Respondent liable for additional costs incurred by the Union as a result of the Respondent's unlawful conduct. See *Frontier Hotel & Casino*, 318 NLRB 857 (1995); *Harowe Servo Controls*, 250 NLRB 958 (1980); *J. P. Stevens & Co.*, 239 NLRB 738, 773 (1978), remanded in relevant part 623 F.2d 322 (4th Cir. 1980), cert. denied 449 U.S. 1077 (1981), supplemented 268 NLRB 60 (1983) (negotiating expenses); cf. *Houston County Electric Cooperative*, 285 NLRB 1213, 1217 (1987) (employer did not set out on particularly egregious course of conduct aimed at undermining union and frustrating bargaining); *Neely's Car Clinic*, 242 NLRB 335 (1979) (no showing of demonstrable nexus between employer's unlawful conduct and union's negotiating expenses).

[8] The tentative agreement on the Guild shop provision requires ''membership in good standing'' as a condition of employment. The dues provision requires payment of ''membership dues.'' In ordering the Respondent to reinstate these provisions for purposes of good-faith bargaining, we are not ordering the reinstatement of facially unlawful contract terms. The Board has found that, although the phrase ''member in good standing'' is ambiguous, it is not facially invalid. *Paramax Systems*, 311 NLRB 1031, 1037 (1993), enf. denied on other grounds sub nom. *Electronic Workers IUE v. NLRB*, 41 F.3d 1532 (D.C. Cir. 1994).

[9] Member Cohen would not sever and remand this issue. The judge made specific findings regarding the existence of tentative agreements and did not include a finding that agreement on a 3-year term had been achieved. The judge declined to make such a finding after hearing evidence on the issue. Thus, Member Cohen concludes that the judge found that the parties did not agree to this alleged provision.

(c) Threatening any employee with reprisals or discharge to encourage the employee to oppose the Union.

(d) Engaging in surveillance of or creating the impression of surveillance of employees in the exercise of their Section 7 rights.

(e) Engaging in bad-faith bargaining, repudiating the collective-bargaining agreement and refusing to abide by its terms, and withdrawing recognition from the Union as the bargaining representative of the unit employees in the absence of a good-faith doubt of the Union's majority status or its actual loss of majority; and reneging on tentative agreements reached with the Union during collective-bargaining negotiations, pending agreement on a collective-bargaining agreement or negotiation to lawful impasse.

(f) Disciplining any employee for supporting the Union.

(g) Changing any employee's job duties, or assigning any employee less desirable job duties, for supporting the Union.

(h) Informing any employee that it is denying the employee a merit raise because the Union filed a grievance.

(i) Refusing to publish an employee's column because of the employee's support of the Union, or because the Union filed a Board charge on the employee's behalf.

(j) Announcing or implementing any unilateral change in employees' wages or working conditions.

(k) Unilaterally granting across-the-board wage increases to unit employees; provided that nothing here shall be deemed to require the Respondent to cease giving effect to any wage increases of any kind that it has granted heretofore.

(l) Assigning any reporter to work for or under the direction of any other newspaper.

(m) Infringing on its bargaining unit reporters' jurisdiction to cover all stories not assigned to correspondents or derived from wire services.

(n) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its repudiation of the collective-bargaining agreement and withdrawal of recognition from the Union and, on request, bargain in good faith with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All editorial, advertising, commercial, janitorial, and maintenance employees, but excluding the publisher, editor, marketing and promotions manager, retail advertising supervisor, classified advertising supervisor, circulation director, circulation marketing director, city editor, managing editor, business manager, office manager, executive secretary, and all other employees in the mailroom, pressroom, and composing room.

(b) Reinstate, for purposes of good-faith bargaining, the tentative agreement reached December 4, 1991, on conditions of employment.

(c) Restore the former job duties of artist Linda Heather and advertising dispatch clerk Virginia Meyer.

(d) Grant reporter Douglas Bennett retroactively the merit raise that it refused to grant him in August 1992 because the Union filed a grievance on his behalf, plus interest.

(e) Restore Douglas Bennett's former duties as full-time reporter for The Independent.

(f) Make Dennis Highben whole, plus interest, for the lost earnings he suffered as a result of its refusal to publish his weekly column.

(g) Remove from its files any reference to the unlawful discipline of Melanie Matthews and Carol Rohr and notify them in writing that this has been done and that the discipline will not be used against them in any way.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Post at its facility in Massillon, Ohio, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the issue whether, on December 4, 1991, the parties had reached a tentative agreement on the term of their new collective-bargaining agreement, is severed from this case and remanded to the administrative law judge solely for the purpose

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

of making credibility resolutions and findings of fact based on the existing record.

IT IS DIRECTED that the administrative law judge shall prepare and file with the Board, and serve on the parties, a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations regarding the matter; and that following the service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT solicit, assist, condone, or encourage the circulation or signing of any petition or letter opposing the Cleveland Newspaper Guild Local 1, a/w The Newspaper Guild, AFL–CIO, CLC.

WE WILL NOT coercively question you about signing an antiunion petition, or require you to reveal your support of or opposition to the Union.

WE WILL NOT threaten you with reprisals or discharge to encourage you to oppose the Union.

WE WILL NOT engage in surveillance or create the impression of surveillance of employees in the exercise of your Section 7 rights.

WE WILL NOT engage in bad-faith bargaining, repudiate the collective-bargaining agreement, withdraw recognition from the Union as your collective-bargaining representative in the absence of good-faith doubt of the Union's majority status or its actual loss of majority status, or rescind tentative agreements reached in the course of negotiations pending agreement on a new collective-bargaining agreement or negotiation to lawful impasse.

WE WILL NOT discipline you for supporting the Union.

WE WILL NOT change your job duties, or assign you less desirable job duties, for supporting the Union.

WE WILL NOT tell you that we are denying you a merit raise because the Union filed a grievance.

WE WILL NOT refuse to publish any employee's column because of the employee's support of the Union, or because the Union filed a Board charge on the employee's behalf.

WE WILL NOT announce or implement any unilateral change in wages and working conditions.

WE WILL NOT unilaterally assign any reporter to work for or under the direction of any other newspaper.

WE WILL NOT infringe on our reporters' jurisdiction to cover all stories not assigned to correspondents or derived from wire services.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All editorial, advertising, commercial, janitorial, and maintenance employees, but excluding the publisher, editor, marketing and promotions manager, retail advertising supervisor, classified advertising supervisor, circulation director, circulation marketing director, city editor, managing editor, business manager, office manager, executive secretary, and all other employees in the mailroom, pressroom, and composing room.

WE WILL reinstate, for purposes of good-faith bargaining, the tentative agreement we reached December 4, 1991, with the Union on conditions of employment.

WE WILL restore the former job duties of artist Linda Heather and advertising dispatch clerk Virginia Meyer.

WE WILL grant reporter Douglas Bennett retroactively, plus interest, the merit raise that we refused to grant him in August 1992.

WE WILL restore Bennett's former duties as full-time reporter for The Independent.

WE WILL make Dennis Highben whole, plus interest, for the lost earnings he suffered as a result of our refusal to publish his weekly column.

WE WILL notify Melanie Matthews and Carol Rohr that we have removed from our files any reference to their discipline and that it will not be used against them in any way.

MASSILLON NEWSPAPERS, INC. D/B/A
THE INDEPENDENT

Christine S. Hoffer, Esq., for the General Counsel.
Jon C. Flinker, Esq., of Beachwood, Ohio, for the Respondent.
George W. Palda, Esq. (Berkman, Gordon, Murray & Palda), of Cleveland, Ohio, for the Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Akron, Ohio, on 17 days from March 29 to May 6, 1993. The charges were filed by the Union in Case 8–CA–24395 on March 3, 1992 (amended April 13 and June 29, 1992), in Case 8–CA–24771 on July 28, 1992, in Case 8–CA–25050 on December 1, 1992 (amended January 15 and February 24, 1993), and in Case 8–CA–25153 on

January 15, 1993. The complaint was issued June 30, 1992, and the first and second consolidated complaints were issued September 30, 1992, and February 25, 1993.

Since January 1987 two previous publishers and Jack Shores, the present publisher of The Independent newspaper in Massillon, Ohio, had been bargaining unsuccessfully for a renewal of the 1984–1987 union agreement. On September 27, 1991, Attorney Michael Tannler (an official of the parent corporation) ''assumed responsibility'' for the negotiations, without Shores sitting in. On December 4, 1991, in the third bargaining session, the Company and Union reached agreement on all noneconomic issues.

The evidence indicates that Shores, who had earlier informed antiunion employee Rebecca Thompson how employees could *get out of* the Union, advised her that there was no tentative agreement on noneconomic issues because he did not like the wording. Thompson continued her antiunion campaign, with the support of Shores and other supervisors.

The primary issues are whether (a) Thompson was an agent for whose conduct the Company is responsible, and whether the Company, the Respondent, (b) coerced employees in its support of Thompson's antiunion campaign, (c) engaged in bad-faith bargaining, (d) unlawfully withdrew recognition of the Union, (e) retaliated against union supporters, and (f) made unlawful unilateral changes in wages and working conditions, violating Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Company, and Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, publishes a daily newspaper, The Independent, at its facility in Massillon, Ohio, where it annually derives over $200,000 in gross revenues and subscribes to the Associated Press, an interstate news service. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Cleveland Newspaper Guild Local 1, a/w The Newspaper Guild, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Negotiations began in January 1987 on the local level to renew the parties' 1984–1987 collective-bargaining agreement, which remained in effect. The negotiations continued after Jack Shores became the publisher in July 1990. (Tr. 25, 1780, 2329; G.C. Exh. 2, p. 2, art. 1, sec. 3; R. Exh. 21.)

Shores' last bargaining session with the Union was held on August 29, 1991.[2] As he recounted in his February 10, 1993 pretrial affidavit, ''After the negotiating meeting of August 29, and *early* in September 1991,'' outside sales representative Rebecca Thompson ''told me that a number of employees do not wish to be represented by the Guild and asked me *how do we get out of* the Guild'' (emphasis added). Shores checked with corporate counsel and advised her (G.C. Exh. 108 at 7, par. 22) that

> she needed to produce evidence demonstrating that a majority of the employees no longer wished the Guild to be their bargaining representative, such as a petition signed and dated by employees.

This advice is not alleged to violate the Act.

Later that month, on September 17, Shores posted at the plant and distributed with the employees' paychecks a letter that I infer was written for the purpose of, and that reasonably tended to, support Thompson's antiunion campaign (Tr. 2515; R. Exh. 50). The letter was highly critical of the Union's bargaining position, despite the fact that International Representative Hannah Jo Rayl had told Shores ''I thought that we'd had a good day'' in the August 29 negotiations (Tr. 586). The letter—written almost 3 weeks after the last bargaining session and after Shores advised Thompson how to get out of the Union—stated, in part:

> TO: All Guild Represented Employees:
>
> I've had a chance to reflect on the events of the last bargaining session as well as on the Guild Committee's version of those events and want to give you my perception of what happened.
>
> . . . .
>
> We were stunned when the Committee informed us that it was backing off all agreements reached since mid-summer 1988.
>
> I recognize that the Committee has tried to justify its actions by references to ''packaged proposals,'' ''signing off'' and ''initializing.''
>
> . . . .
>
> In any event, we're further away from reaching an agreement than when I first arrived here over a year ago. Needless to say, I'm disappointed.

At the trial, Shores and Thompson gave contrary testimony. They claimed that Thompson asked about getting out of the Union (or, in Thompson's words, how ''to get rid of this Union'') *after* Shores wrote the September 17 letter, and in response to that letter—instead of early in September, as Shores admitted in his pretrial affidavit. (Tr. 2377–2380, 2628, 2778, 2902–2907.) I discredit this testimony of the timing as fabricated.

B. *Agreement on Noneconomic Issues*

Then 10 days after Publisher Shores wrote the September 17 letter criticizing the Union's bargaining position, the Company's parent corporation (the Goodson Newspaper Group, Inc., Tr. 3123) replaced Shores in the negotiations. On September 27 Attorney Michael Tannler, vice president of the parent corporation, wrote International Representative Rayl, in part (G.C. Exh. 35):

> I am writing to advise that I have *assumed responsibility* for the labor contract negotiations now underway between the Independent and the Guild. *I don't expect to be asking Jack Shores to sit in.* Accordingly,

[1] R. Exhs. 104 and 105 are received in evidence. The duplicate transcript page numbers following 981 are changed to 892A–981A.

[2] All dates are from August 1991 to March 1992 unless otherwise indicated.

> you should contact me directly if you wish to discuss the negotiations. [Emphasis added.]

Tannler represented the Company in the negotiations on October 22 and December 3 and 4. The parties reached a tentative agreement on all noneconomic issues, including economic issues that did not involve an increase in cost to the Company. On the next morning, December 5, after having conferred with Shores and with co-counsel, Tannler telephoned Rayl, confirmed the agreement, and advised that Shores would be contacting her to set up negotiations on the economic issues. (Tr. 607–608, 653–654, 669–670, 672–673, 805–806, 2529–2530; G.C. Exh. 49.)

When Shores telephoned Rayl, he told her he did not expect them to reach an agreement the day before. ''I never dreamed that this would happen. And I am not prepared to give you an economic proposal. . . . I'm going to have to get back to you with a date.'' (Tr. 670–671.) Later that morning when committee member Roland Dreussi went to Shores' office to set up a bargaining session, Shores said that he was very busy, that the agreement caught him by surprise, that he did not have anything ready, and that he did not envision being able to meet until the end of December or beginning in January (Tr. 1706–1707).

Shores admitted, ''I had not anticipated an agreement on the noneconomics at that time'' (Tr. 2356).

C. *Company Support of Antiunion Campaign*

1. Publisher Shores not pleased with language

The following Monday, December 9, in their work area, staff artist Linda Heather and advertising dispatch clerk Meyer were ''excited'' about the Union's negotiating a tentative agreement on noneconomic issues and were speculating whether an agreement on economic issues could be reached in time for a retroactive check by Christmas.

Rebecca Thompson walked up and, as Heather credibly recalled, asked what they were so happy about. When they explained, Thompson ''just got real serious on the subject and seemed to be upset by our news and said we didn't know what we were talking about and went out of the room.'' (Tr. 1432–1433, 1484.)

The evidence is *not* clear whether at this point, Thompson had already been in contact with Shores regarding his attitude about the tentative agreement that the corporate attorney had negotiated. Since early September, when Shores gave her the wording for an antiunion petition, Thompson had been campaigning against the Union (Tr. 2781, 2908). Of course, if the reported progress in contract negotiations were true, it would render her campaign to get rid of the Union more difficult.

The evidence *is* clear that by the time Thompson discussed the tentative agreement with Heather and Meyer again (on December 19, after she began soliciting signatures on the antiunion petition 3 days earlier), she had in fact been in contact with Shores.

Meanwhile, in early December before the December 14 Christmas party as former Business Manager Bruce Inzetta credibly recalled, Shores informed the department heads and other supervisors in a weekly Monday meeting that Thompson was ''orchestrating'' the antiunion campaign (Tr. 370–378, 381–384, 397–399, 410–413, 448, 467–469). By his demeanor on the stand, Inzetta appeared to be a truthful, forthright witness.

On December 19 Thompson invited Heather and Meyer to lunch with her and with Lisa Warden, another outside sales representative who was also antiunion. There, as Meyer credibly testified (Tr. 1173–1174), Heather asked Thompson ''why she was circulating the petition when . . . an agreement had been reached on noneconomics of the contract.'' Thompson, *revealing* that she obviously had been in communication with Publisher Shores, answered:

> No, you don't.
>
> Linda Heather said, ''Yes, we do, Becky. . . . [T]he corporation attorney agreed. . . . [W]e do have an agreement.'' And Becky said, ''No, you don't. You girls may think you do, but you don't. . . . Jack [Shores] doesn't like it. Jack doesn't like the wording. And Jack isn't going to accept it.''
>
> I said to Becky, ''How do you know all of this?'' And she said, ''I just do.''

When asked on cross-examination if Thompson said that she had spoken to Shores about the contract, Meyer conceded that Thompson had not—after answering ''Well, if she said to you, Jack doesn't like it, then how else would she know if Jack didn't tell her?'' (Tr. 1231–1232.)

Similarly, as Heather credibly recalled (Tr. 1435–1436),

> I said [to Thompson], ''Don't you realize that we have reached with our union an agreement on the noneconomics of our contract. This petition is only going to ruin and destroy everything we've worked for over all these years. . . . Why are you trying to do this at this time?''
>
> And she kept shaking her head no at me. . . .
>
> And she said to me, she says, ''No, you don't.''
>
> I said, ''No, I don't what?''
>
> She says, ''No, you don't. . . . Your union may think you have an agreement but you don't have an agreement. . . . Jack doesn't like it. Jack doesn't like the words. He only works by one set of rules, his set of rules.''
>
> And at that point Virginia [Meyer] turned to Becky and said, ''Becky, what makes you think this? . . . How do you know this information?''
>
> And she said, ''I just do.''

Thompson conceded that she told Heather and Meyer ''No you don't. You think that you have everything [except the economics] settled. You don't have anything settled.'' She denied saying that ''Jack doesn't like it'' and ''doesn't like the wording'' and that ''Jack only runs the company by [his] set of rules.'' She also denied that she had discussed the ''contract negotiations with Jack.'' (Tr. 2810–2811.) Warden testified that ''all I really recall'' is that ''Becky said that she had been hearing that for over a year. And I also said that I had been hearing that for a long, long time'' (Tr. 1993). Jack Shores denied that he discussed the status of the collective-bargaining with Thompson (Tr. 2449–2450).

Both Heather and Meyer impressed me most favorably by their demeanor on the stand as being truthful witnesses. I credit their testimony. Warden appeared on the stand to be

less than candid. I discredit her denials (Tr. 1993–1995). I also discredit Thompson's and Shores' denials. Their credibility is discussed below.

I find that Shores had advised Thompson that there was no tentative agreement on noneconomic issues, for the purpose of assisting her in obtaining signatures on the antiunion petition.

2. Antiunion campaigning on company time

a. *In advertising director's office*

On Monday morning, December 16, Rebecca Thompson began soliciting signatures on the antiunion petition that she had drafted in September on Publisher Shores' advice (Tr. 2782, 2922–2923). The petition, addressed to Shores, stated (G.C. Exh. 17):

> To whom it may concern:
>
> The following individuals do not want to be represented for collective bargaining purposes by the Guild or any other unions.
>
> We prefer to be able to deal directly with the Publisher.

The Company had a longstanding requirement that union business not be conducted on company time. It required that employees who participated in contract negotiations or grievances during their working time must make up the lost time. (Tr. 969–972, 1040–1042.) I discredit Shores' claim that he had no knowledge of these requirements (Tr. 2549–2551, 2631–2635). I note that at one point he admitted telling union representatives in a grievance meeting that they make sure their conversation with the grievant was not on company time (Tr. 2633).

On Monday morning, December 16, Thompson began asking employees to sign the antiunion petition on company time, both in Advertising Director Richard Charnock's office and at the employees' work stations.

One of the employees that Thompson invited into Charnock's office was circulation clerk Carol Rohr. As Rohr credibly testified, ''I had asked [switchboard operator] Melanie [Bednar Matthews] if she would oversee my phone calls for me and call me if there was something that she needed'' Rohr for. (Tr. 357.)

In Charnock's office, Thompson first talked about the Christmas party 2 days earlier. Speaking for Shores, she said that Shores thought Rohr had done a great job and was a ''diamond in the rough.'' Thompson next asked Rohr about her background and how she enjoyed her job. After about 10 minutes, Thompson spent about 20 additional minutes talking about the Union and seeking Rohr's signature on the antiunion petition—on company time. Although Charnock needed the use of his office and was in and out during this long solicitation, he permitted the conversation to continue without saying anything. He was on the telephone much of the time. (Tr. 243–246, 285–292, 296–299.)

I find that the conduct of Advertising Director Charnock—permitting his own office to be used in this manner while he was busy performing his work—both (1) tends to confirm Business Manager Inzetta's credited testimony that Publisher Shores had already informed the department heads and other supervisors about Thompson's antiunion campaign and (2) demonstrates Charnock's understanding that Shores expected him to cooperate with Thompson's campaign against the Union. Charnock did not testify.

That same day, December 16 (when Charnock was not present), Thompson invited classified sales clerk Barbara Baker into Charnock's office and solicited her signature on the petition. Baker testified that she had to leave the phones to go there. (Tr. 1853–1854, 1857.)

On December 17 (also when Charnock was not present), Thompson called classified sales clerk Gaynell Butler into Charnock's office. Butler testified (Tr. 1307–1308, 1322–1326):

> I was a little nervous about being in Mr. Charnock's office especially . . . because . . . I thought we were talking about union business on company time when she asked me . . . if I would sign this petition . . . the phone is always ringing. And at that time, there was just two of us taking most of the calls. I said I really didn't want to talk about it then. . . . I needed to get back out to my desk. And I took the petition back out with me.
>
> Q. Then what happened after that?
>
> A. Later in the day, I saw her in the hallway and I asked her if I could have more time to think about it. . . . She said, ''No, I need to *get these names turned into Jack [Shores]* by the end of the day.'' [Emphasis added.]
>
> . . . .
>
> I went back to my desk. Barb Baker and I were . . . discussing it. . . . [S]he said, ''why don't we go ahead and sign it. It would make us look good to Jack, but if it really came down to a union vote . . . we could keep the union in; then he would still think we were . . . good guys—in so many words.''

Butler impressed me most favorably as a truthful witness. I credit this testimony. I discredit Shores' and Thompson's denials that Thompson ever told Shores who signed the petition (Tr. 2390, 2795). By their demeanor on the stand, both Shores and Thompson appeared to be willing to fabricate any testimony that might help the Company's cause.

About 3:30 or 3:45 that Tuesday afternoon, December 17, as Thompson testified, Shores came to her desk and reported a complaint from the Union about her antiunion activity. According to Thompson (Tr. 2932–2933, 2935–2936), Shores told her ''please, not to do this on working hours'' and she said okay. According to Shores (Tr. 2388–2389, 2635), the Union called and complained that Thompson ''was circulating a petition on company time'' and he asked her,

> Are you doing this?
>
> And she said, ''Yes.''
>
> I said, ''Are you doing it on company time?''
>
> And she said, ''Yes.''
>
> And I said, ''You probably shouldn't do it on company time.''
>
> And she said, ''Okay.''

If this were a factual account of the conversation, Shores would be conveying to Thompson his approval of her antiunion activity and was merely requesting or suggesting that she stop campaigning against the Union on company

time. I find, however, that this is a fabricated account of what Shores told her.

Thompson did not stop her antiunion campaigning on company time (Tr. 2818–2820, 2944). Within 2 hours, as discussed below, she resumed her solicitation of signatures on the petition at employees' work stations. She merely stopped using Charnock's office for the solicitations.

I discredit Shores' claim that he told Thompson that ''You probably shouldn't [circulate the petition] on company time'' and Thompson's corroborating testimony. I infer that what Shores told her was to stop taking employees into the advertising director's office to solicit their signatures and that he approved her continuing the antiunion campaigning at the employees' work stations on company time. I also discredit, as a further fabrication, Shores' claim (Tr. 2387–2388) that the first time he learned that an anti-Guild campaign had begun was December 17 when he received the complaint from the Union (rather than in September when he gave Thompson the wording for the antiunion petition).

In its brief (at 14) the Company argues that

> Charnock allegedly cooperated with Thompson by allowing her to use his office to solicit signatures during work time. . . . There was nothing extraordinary about Thompson using Charnock's office for private conversation during work time. Even if Charnock was in and out of his office sporadically during portions of one of these conversations, as alleged, there is no evidence that he knew what was going on and he certainly didn't say anything . . . there is no evidence that Charnock was even aware of Thompson's purpose. . . . Charnock's conduct towards Thompson was entirely neutral and cannot reasonably be construed as assistance.

Even if it could be believed—without supporting evidence—that Charnock did not overhear any of the conversation in his own office, I deem this argument untenable.

I find that by permitting employee Thompson to use Advertising Director Charnock's office in the antiunion campaign, the Company was placing her in a position in which the bargaining unit employees would reasonably believe that she was acting on the Company's behalf.

I also find that the Company's permitting Thompson to use Charnock's office was for the purpose of supporting, and reasonably tended to support, Thompson's campaign to get rid of the Union.

b. *Continued campaigning on company time*

Thompson conceded that about 3 p.m. that Tuesday afternoon, December 17, shortly before her conversation with Publisher Shores, she went to the circulation department on the second floor where she asked Eugene John (the circulation director) when the (nonsupervisory) district sales managers would be returning to the plant and told him: ''Well, will you tell them that I would like to talk to them when they get in?'' (Tr. 2782, 2839–2840, 2927–2928.) I discredit John's and Circulation Marketing Director Michael Gorsich's claim (contrary to Thompson's testimony) that the request occurred on December 16 (Tr. 2156, 2682–2683).

When district sales managers Jeffrey Adams, Rodger Bartlett, and Sheri Orner Primack returned, as Primack credibly testified, John advised them in Gorsich's presence (Tr. 1583, 1631–1633) that

> we were to see Becky Thompson.
>
> Q. Had you ever been directed by a supervisor to report to an employee before?
>
> A. No, I had not.
>
> . . . .
>
> Q. Well, what was the words that Gene John used?
>
> A. When he first informed us of it, he said that Becky Thompson wished to speak with us.
>
> Q. Was there anything else he said beside that?
>
> A. ''*Make sure* that you make a point to get with her,'' or ''to see her,'' or something along that lines. [Emphasis added.]

Both John and Gorsich were aware of the purpose of Thompson's request to talk to the district sales managers because, as found, Publisher Shores had already informed them that Thompson was ''orchestrating'' the antiunion campaign.

Thompson proceeded to talk to the district sales managers on the job at length.

Despite her purported (but discredited) promise to Shores about 3:30 or 3:45 that same afternoon (that she would not engage in the antiunion activity ''on working hours''), Thompson conceded that from about 5:30 to 6:30 p.m., she talked to the three district sales managers about the Union at the front counter (soliciting their signatures on the antiunion petition) (Tr. 2783–2784, 2788–2789). She further conceded (Tr. 2840):

> Q. The district managers were on working time. Correct?
>
> A. Yes, ma'am.
>
> Q. And they were busy answering the phones and actually working during that time period, correct?
>
> A. Correct.

Thompson testified that her conversation with the three district sales managers ended when outside sales representative David Matthews walked in and asked her (Tr. 2788)

> ''How many names do you have on this petition now? And I told him I thought I had nine. And he said, ''Now you have eight.''
>
> I said, ''What do you mean?'' He said, ''I want my name off that petition.''

During part of the long conversation, both John and Gorsich (the district sales managers' supervisors) were downstairs, but they did nothing to stop the lengthy solicitation on the employees' working time (Tr. 1055–1058, 1584–1590).

When district sales manager Primack realized that Thompson was urging the three employees to sign the antiunion petition, she asked Thompson, ''Who's idea was this?'' Thompson did not answer. John, who was listening, stated he ''would say something'' and then stopped, never finished the statement, and went back upstairs. (Tr. 1584–1585, 1587.) I discredit John's claim that he did not overhear what was being said (Tr. 2684).

Gorsich (who was working at a computer about 25 feet away) admitted that on his way back upstairs, ''I stopped at the counter and asked one of the district managers if there

was anything happening that I needed to do.'' He denied that he overheard any of the conversation. (Tr. 2160, 2208–2209.) I discredit the denial. John's and Gorsich's credibility is discussed later.

The Company contends in its brief (at 15):

> The fact that supervisors coincidentally happened to be in the area when Thompson was soliciting employees is certainly not sufficient to establish supervisory encouragement or assistance in Thompson's activity. Thompson acted entirely on her own in circulating the [antiunion petition].

To the contrary I find that by directing the district sales managers to ''Make sure'' they talked to Thompson and by permitting Thompson to campaign against the Union on company time—despite the longstanding requirement that union business not be conducted on company time—the Company was further placing Thompson in the position of acting on its behalf.

I also find that the Company's doing so was for the purpose of supporting, and reasonably tended to support, Thompson's campaign to get rid of the Union.

3. Shores' coercive support

Thompson had been campaigning 3 months to get rid of the Union—since Shores gave her advice on the wording of an antiunion petition in early September. Yet by Friday, December 20, after soliciting signatures on the petition that week, Thompson had succeeded in obtaining the signatures of only 9 of the 33 bargaining unit employees.

The nine signatures included her own and that of David Matthews who, as found, had requested that his name be removed from the petition. The other four who signed on December 16 were George Emmert, Sandra Sheets, Lisa Warden, and James Williams.

The three remaining signatures were those of employees working at the front counter, Barbara Baker, Gaynell Butler, and Rosemary Harwig. They were obtained December 17 *after* Thompson told Butler that she could not ''have more time to think about it'' because Thompson needed to ''get these names turned into Jack'' (Shores) by the end of the day, as found above. (Tr. 1308, 1324–1325, 2930; G.C. Exh. 17.)

It was under these circumstances that Shores, finding so little support for the petition, took an active role in encouraging the employees to sign it. As indicated, I have discredited Shores' denial that Thompson ever told him who signed the petition. I note that on two occasions in January, Shores revealed to Business Manager Inzetta who had signed and who ''had declined'' to sign the antiunion petition in the business office (Tr. 384–387).

As found, Shores had already advised Thompson that there was in fact no tentative agreement on noneconomic issues because he would not accept the agreement negotiated by the corporate counsel. Also as found, Shores' purpose was to assist Thompson in obtaining signatures on the antiunion petition.

On December 20 Shores spent the entire day in meetings with groups of bargaining unit employees (Tr. 2401–2404), providing an antiunion message to the employees. The message was expressed in question and answer notes he prepared before the meetings (after talking to some of the employees under his open-door policy) and in his December 20 letter that he read at the meetings, posted on the bulletin boards, and distributed with the employees' paychecks. (Tr. 2401–2404, 2525; R. Exhs. 16, pars. 4, 5, and 56, 1st answer.)

The message specifically included the following:

1. ''I don't think unions are necessary'' and ''I prefer a nonunion working environment.''

2. ''Nobody—and I repeat nobody—will be disciplined or lose their job or any benefits if they should choose to sign an antiunion petition.'' He did not make the same commitment to employees who chose *not* to sign the antiunion petition.

3. He threatened a delay in the promised negotiations on economic issues *until* a majority was determined, by stating: ''*If* [emphasis added] a majority of you want union representation, I will continue to bargain in good faith with the union for a new contract.'' This threat, along with his refusal to accept the tentative agreement on noneconomic issues, was a clear forewarning of a prolonged delay in the expected wage increase, *unless* a majority of the employees signed the antiunion petition.

Testifying about the meeting she attended on December 20, circulation clerk Carol Rohr pointed out that Shores ''did not state one way or the other what would happen'' if ''we didn't sign the petition'' (Tr. 251). Similarly, district sales manager Sheri Primack observed that Shores ''never addressed what would happen to those who wanted to be represented by the union'' (Tr. 1640).

Advertising dispatch clerk Virginia Meyer credibly testified about the question she asked in the meeting she attended (Tr. 1178):

> Q. What did you ask?
>
> A. I asked him how long it would be after all of this was settled before he would begin to negotiate again with our union.
>
> Q. And did Mr. Shores have a response?
>
> A. No, he just kind of looked at me.

Shores admitted that he ''did not tell the employees expressly that this was not a campaign on behalf of the Company'' (Tr. 2654). Despite the antiunion campaigning on company time, Shores neither told them that Thompson was acting on her own in circulating the petition, nor that the Company had nothing to do with the petition (Tr. 2546, 2653–2654).

Evidently referring to the general statements in Shores' December 20 letter (R. Exh. 16, 4th and 5th pars.) that ''You have the right to join a union and bargain collectively'' and ''The choice of whether or not to be represented by the Guild union is a personal one for every one of you to make on your own,'' the Company argues in its brief (at 22) that

> Shores' speech and letter to employees on December 20 was nothing more than a restatement of employee rights to support or reject union representation, and that [the Company] would protect employees from any interference with their exercise of these rights.

I note that the Company erroneously contends in its brief (at 16) that Shores announced ''the Company's official policy of neutrality with regards to Thompson's anti-Guild campaign.''

I find it clear that by telling the employees ''I prefer a nonunion working environment,'' he was instead conveying his approval of the antiunion campaign.

Despite the general language in the December 20 letter that Shores read, I find that the specific statements quoted above and his antiunion speech and answers to questions, taken as a whole, reasonably tended to coerce the employees into forsaking the Union and signing the antiunion petition. I therefore find that the Company, by Shores' quoted statements in the December 20 meetings, coercively encouraged employees to sign an antiunion petition, violating Section 8(a)(1) of the Act.

I also find that this company conduct was for the purpose of supporting, and reasonably tended to support, Thompson's campaign to get rid of the Union.

4. Coercion in circulation department

a. *Coercion by Gorsich on December 20 and January 7*

On December 19, the day before Publisher Shores spent the entire day making antiunion speeches in employee meetings, he and the Company's local counsel met with department heads and other supervisors, including Circulation Director Eugene John and Circulation Marketing Director Michael Gorsich (Tr. 394, 2558).

The counsel advised these management representatives what they could and could not legally tell employees during the antiunion campaign. He advised them that they should be neutral ''on whether people should sign or not sign that petition'' (not that management and supervisors must be neutral toward the Union and the petition) and advised against threats, interrogation, promises, and spying (the so-called TIPS). (Tr. 395, 416 -417.)

I discredit Shores' claim that the attorney stated ''we had to remain neutral in this'' (Tr. 2401). Shores admitted that in conversations with employees, he ''told them I preferred nonunion'' (Tr. 2449). Also, as found, he admitted telling employees in the December 20 meetings that ''I don't think unions are necessary'' and ''I prefer a nonunion working environment.''

I also discredit Shores' claim that he told the supervisors ''to stay out of this'' (Tr. 2648). In his letter (R. Exh. 16), which he read at the employee meetings on December 20, he stated to the contrary in the last paragraph:

> If you have any questions regarding this matter feel free to contact *your department head* or me personally. [Emphasis added.]

After Shores' December 20 meeting with circulation department employees, John and Gorsich remained in the room for a discussion with the employees. As circulation clerk Rohr credibly testified, they stated they could not tell her which way to go (regarding signing the antiunion petition), but Gorsich stated ''there's no riding the fence, you're either on it or you're off it.'' (Tr. 251–252.)

Similarly on January 7, Gorsich told Rohr (who still refused to sign the petition) that there was ''No riding the fence . . . you're either on it or you're off it. You're going to have to make a decision on whether you're for it or you're against'' (Tr. 253).

Gorsich (in accordance with the Company's position that the no-riding-the-fence statements were not coercive) candidly admitted (Tr. 2144–2145, 2147) that Rohr said

> she wished that they just didn't have to make a decision at all regarding the petition; that they could just leave things at status quo. I responded that that would be nice, but the issue had already been raised and there was really . . . no way to avoid it . . . not making a decision was making a decision.
>
> . . . .
>
> She indicated that she wished . . . things could just go on . . . the way they had in the past.
>
> . . . .
>
> I said, ''There's no way to ride the fence . . . not making a response is a response.''

The complaint alleges that on these two occasions the Company, by Gorsich, ''unlawfully and coercively warned employees that they could not refrain from supporting either the [Company] or the Union during an antiunion campaign.'' The Company argues in its brief (at 25) that Gorsich's no-riding-the-fence comment is merely ''a truthful description of the position in which employees find themselves where [an antiunion] petition campaign occurs'' and ''can hardly be regarded as a coercive warning.''

Even apart from the context of Gorsich's no-riding-the-fence statements, I find it obvious that the statements were similar to, or a form of, coercive interrogation. Gorsich was requiring the employees in the meeting, and later employee Rohr individually, to reveal whether they were willing, by signing the petition, to represent that they opposed the Union. He was doing so in disregard not only of their right to keep their union sentiments to themselves, but also their right to remain neutral on this matter—their Section 7 ''right to refrain from any or all such activities.''

The statements were made in the context of a large majority of the bargaining unit employees having already chosen to remain with the Union by refraining from signing the antiunion petition. In an effort to encourage employees to sign the petition, as found, Publisher Shores had met all one day with groups of employees, expressing his opposition to the Union, promising to protect their jobs and benefits if they signed the petition, and forewarning them of a prolonged delay in the expected wage increase unless a majority of them signed the petition.

Although Gorsich was not overtly suggesting which choice the employees should make, his obvious purpose was the same as Shores', to encourage the nonsigning employees to change the choice they had already made to refrain from signing the petition. He suggested no way to indicate their choice other than by signing the petition.

Particularly in this context, I find it clear that the Company, by Gorsich, coercively warned employees on December 20 and January 7 that they could not refrain from supporting either the Company or the Union during the antiunion campaign, violating Section 8(a)(1).

I further find that this company conduct was for the purpose of supporting, and reasonably tended to support, Thompson's campaign to get rid of the Union.

b. *Coercion by John and Gorsich on January 6*

On January 6, Circulation Director John called district sales managers Adams and Bartlett (with Circulation Marketing Director Gorsich) into John's office. They discussed the antiunion campaign. After the meeting Bartlett and Adams sent handwritten letters, dated January 6, to Publisher Shores. Adams' letter stated he wanted to add his name to (Thompson's) petition, and Bartlett's letter stated, ''I no longer wish to have the Guild do my bargaining for me.'' (R. Exhs. 57, 58; Tr. 1096.)

Meanwhile, Thompson had obtained only one additional signature, that of Teresa Melcher, on the antiunion petition (a total of 10 names, including her own and that of David Matthews, who had requested that his name be removed). Thompson had obtained Melcher's signature in the mailroom on December 23, 3 days after Shores' antiunion meetings on December 20. (Tr. 2843; G.C. Exh. 17.)

The complaint alleges that the Company, by both John and Gorsich, (1) unlawfully solicited employees' signatures on an antiunion petition, (2) unlawfully interrogated employees about their union activities and support, and (3) unlawfully threatened employees with unspecified reprisals if they refused to sign the petition.

At the trial on April 8, 1993 (15 months after writing the antiunion letter to Shores), Bartlett confirmed that he had stated his concerns about testifying because of his friendship with John. He also confirmed that he was not real comfortable with testifying at the trial, that at one point he had stated he was considering not honoring his subpoena, and that he refused to meet with the counsel for the General Counsel before taking the stand. (Tr. 1063, 1067.)

Bartlett swore, however, that the pretrial affidavit he gave a year earlier on April 13, 1992 (3 months after the occurrence) was correct (Tr. 1063–1064, 1097, 1099; G.C. Exh. 60). Because of his apparent lack of candor at the trial, I assume that his affidavit, which was introduced into evidence without objection or limitation (Tr. 1076), is more factual than his testimony at the trial.

Bartlett stated in his affidavit (p. 2), in part:

> [In the January 6 meeting], Mr. Gorsich and Mr. John took turns talking. They asked us *what we had decided to do* about the petition. They indicated that they were aware that we had not signed Ms. Thompson's petition and they *wanted to know why*. . . . *[W]hat we thought of her proposal*. I told them that the way Ms. Thompson presented it, upset me. I repeated some of [her comments]. They . . . commented that *that was not the way it was suppose to [be] proposed*. . . . They asked again *what we thought of the petition*. I told them that I thought it was a dead horse issue. They said that it was far from being dead. . . . During the conversation, I indicated that I wanted to remain neutral. Mr. John indicated that *there was no sitting on the fence*. . . . He also said that if he did not produce names from his department, his job would be at stake. They said that we had to make up our minds, but Mr. John said ''by all means *protect yourselves, give your name to Jack [Shores]*.'' They also indicated that since this petition drive was started, all negotiations [were at] a standstill. . . . This conversation took approximately one and a half hours. [Emphasis added.]

John and Gorsich denied virtually all this testimony, except the no-sitting-on-the-fence statement, which the Company argues ''can hardly be regarded as a coercive warning.'' Although John denied remembering ''anything about riding the fence'' (Tr. 2691), Gorsich admitted saying ''there was no way to ride the fence on the issue'' (Tr. 2155).

Like Shores and Thompson, both John and Gorsich by their demeanor on the stand appeared to be willing to fabricate any testimony that might help the Company's cause.

In this state of the record, I accept as true the sworn version of the meeting in Bartlett's pretrial affidavit. Because of his close friendship with John, I discern no reason for doubting the verity of that version, which was given much closer to the date of the occurrence. I deem it more trustworthy than John's and Gorsich's denials, which I discredit along with their other testimony that disputes credited testimony of other witnesses.

Based on Bartlett's affidavit, I find that on January 6 the Company by John and Gorsich coercively interrogated employees Adams and Bartlett and solicited their signatures on the antiunion petition, and by John threatened them with reprisals, violating Section 8(a)(1).

As Bartlett stated under oath in his affidavit, the Company interrogated Adams and Bartlett about what they had decided to do about the antiunion petition, why they had not signed it, and what they thought of Thompson's proposal and the petition. This interrogation occurred after Shores had coercively encouraged these and other employees in his antiunion meetings on December 20 to sign the antiunion petition. Also, it was in the context of a repetition of the threatened delay in promised negotiations (that ''since this petition drive was started, all negotiations [were at] a standstill'').

The Company was threatening employees with reprisals if they did not sign the antiunion petition, by telling Adams and Bartlett that ''by all means protect yourselves, give your name to Jack.''

In addition, I find that the Company further indicated to the employees in the January 6 meeting that it had collaborated with Thompson in planning the antiunion campaign, by telling them that Thompson's comments (on December 17 at the front counter) were ''not the way it was supposed to [be] proposed.''

c. *Coercion by John in February*

(1) Short of majority opposing Union

The responses were slow to the appeals by Thompson, Shores, and supervisors to abandon the Union. After Adams and Bartlett submitted their January 6 letters, only two other employees submitted antiunion letters in January. They were David Crookston on January 13 (R. Exh. 60) and Elaine Johnson on January 20 (R. Exh. 63). In the first 2 weeks of February, only two other employees submitted antiunion letters. They were Stacy Tharp Hilbert on February 10 (R. Exh. 66) and Stephen Doerschuk on February 11 (R. Exh. 61).

These 6 employees, added to the 10 employees who signed Thompson's petition, made a total of 16 employees.

The 17 remaining employees who had refrained from signing the petition or letter were Douglas Bennett, James Cain, Virginia Davis, Margaret Dottavio, Roland Dreussi, Vivianne Greene, Dennis Highben, Michael Keating, David Matthews, Melanie Bednar Matthews, Virginia Meyer, Larry Neeley,

Sheri Orner Primack, Thomas Prusha, Carol Rohr, Joseph Shaheen, and Marla Fox Stanford. (Tr. 944A–951A; G.C. Exh. 56.)

Thus, by February 17—after over 5 months of campaigning by Thompson, joined by Shores, John, and Gorsich during the last 2 months—the total of 16 employees who had signed an antiunion petition or letter was short of a majority of the 33 bargaining unit employees, even if all 16 could be validly counted.

(2) Coercion to obtain another signature

It was under these circumstances, in what was apparently a determined effort by the Company to obtain the signature of another employee, that Circulation Director John engaged in a weeklong campaign to persuade district sales manager Primack to sign a letter opposing the Union.

On February 17, as Primack credibly testified (Tr. 1591):

> I entered [John's] office to get a cup of coffee. As I was going to walk out . . . he said, ''You know, Sheri, I've been thinking. If you give them your name, when the NLRB election comes you can vote for the union and no one will know. . . . if you sign this, I know it'll get them off my back and this department's back.''

Two days later, on February 19 John drove Primack to lunch and asked her, ''Did you give it any thought over what I discussed with you earlier in the week?'' When she responded that she did not want to get involved, he said, ''I've told you before about Jack's temper'' and next asked her if she had ''ever seen Jack Shores in a bad mood with a bad temper.'' He added that Shores ''was a man that you did not want to make mad. He was a man that wouldn't forget'' and that ''by signing this petition that it would give Jack what he wanted and I wouldn't have anything to worry about.'' (Tr. 1592–1593.)

John agreed that Primack's job performance was good, but said, ''That's not the issue . . . the issue [is] the petition.'' John then stated ''he did not want to be put in a situation where he would have to—'' but stopped himself and did not finish the statement (Tr. 1594).

Later in the conversation John ''went back to talking about signing the petition and giving it to him so that I would have nothing to worry about.'' Still later he mentioned ''housecleaning, that those who signed with Jack would have nothing to worry about and those who did not, would.'' (Tr. 1594–1595.)

After lunch, when Primack returned to her desk, she found a form letter similar to the one she had received in the mail with the second of the two antiunion letters from Thompson, dated January 3 and 15 (Tr. 2798–2799; R. Exhs. 85, 86). It was addressed to Shores and read: ''I want to inform you that I no longer wish to be represented by the Newspaper Guild Union.'' (Tr. 1596; G.C. Exh. 92.) On Friday, February 21, 2 days later, Primack asked John if he had left it on her desk and he reluctantly answered that yes, he had. He ''told me to take it home over the weekend and to give it careful consideration.'' (Tr. 1598.) She signed it the next day, February 22, after what she described ''was probably the most mentally straining week'' she ever had (Tr. 1599; R. Exh. 65).

By obtaining this letter, the Company had achieved what purported to be a majority opposed to the Union: 17 of the 33 bargaining unit employees.

(3) Defenses; abuse of Board processes

One company defense, besides John's discredited denials, is a challenge to Primack's credibility. By her demeanor on the stand, however, Primack impressed me most favorably as a truthful, forthright, alert witness with a good memory. I credit her account of what happened.

Apparently the Company's principal defense (in its brief at 34–44) is the one stated on the 14th day of the trial, shortly before it called John to testify. Although the Company stipulated that John was to be excluded from the bargaining unit as the circulation director (Tr. 949A, 1121; G.C. Exh. 61), its local counsel took the position, as discussed below (Tr. 2664), ''That he is not a supervisor.'' I find that this defense is frivolous.

In the negotiations on noneconomic issues on December 3 and 4, the Company and Union agreed to exclude Circulation Director John and Circulation Marketing Director Gorsich from the bargaining unit as *supervisors* (Tr. 617, 630, 920–921; G.C. Exh. 49). Moreover, in paragraph 5 of its July 10, 1992 answer, signed by the local counsel, the Company *admitted* that John has been a *supervisor* and *agent* of the Company at ''all material times'' and admitted that ''John *is* [emphasis added] the Circulation Director'' (G.C. Exhs. 1F, 1H).

On February 10, 1993, both Publisher Shores and Gorsich *admitted* in pretrial affidavits that John is a *supervisor*. In paragraph 44, pages 14–15 of Shores' affidavit, he stated in the Company's defense to the coercion allegations that ''Gorsich and John are low ranking *supervisors* [emphasis added] in the circulation department, supervising only 5 employees'' (G.C. Exh. 108). In paragraphs 2 and 3 of Gorsich's affidavit, he stated that ''I *assist* [emphasis added] in the directing of the circulation department'' and admitted that John is the ''other department *supervisor* [emphasis added]'' (G.C. Exh. 105).

One month later, on March 10, 1993, without explanation, the Company shifted its position. In an answer signed by the same local counsel, the Company stated that it ''denies that Gene John was *ever* [emphasis added] a supervisor within the meaning of Section 2(11) of the Act or an agent of the [Company] within the meaning of Section 2(13) of the Act'' (G.C. Exh. 1Y).

On the sixth day of the trial, on April 8, 1993, when asked for the position of the Company, the local counsel responded (Tr. 949A):

> MR. FLINKER: The company did agree [in December 1991] that Gene John, the person, was to be excluded from the unit. But it *reserves* [emphasis added] its position as to whether he was a supervisor and his acts can be attributed to that of the company.

Before the Company took this equivocal position, there had been overwhelming evidence, which I credit, that John was a supervisor (Tr. 249, 274–275, 322–323, 350, 390–393, 402, 428–430, 912–913). John had the only private office in the circulation department, reported directly to Publisher Shores, attended department head meetings, shared super-

visory duties with Gorsich in directing the work, had the authority to discipline employees and approve overtime, interviewed prospective employees, and dealt with the Union concerning problems that arose in the circulation department.

Following the modified company position, there was much additional evidence concerning John's supervisory authority. Finally, on the 12th day of the trial, the evidence conclusively established—even apart from the Company's pretrial admissions—that John was exercising supervisory authority by responsibly directing employees in the circulation department. Circulation Marketing Director Gorsich admitted that he and John use a ''team approach'' in directing the department and each assists the other. Gorsich also reluctantly admitted that John could ''administer discipline.'' (Tr. 2210–2211.)

Still, the Company did not withdraw the reservation of its position on whether John was a supervisor. Instead it spent more time at the trial, developing further evidence on John's status. Shores, when called as a defense witness, claimed that he had placed Gorsich in charge of the circulation department back in 1990 when Gorsich first started working there (Tr. 2501–2502). He admitted, however, that he did not tell the employees that Gorsich was in charge and did not change John's title (circulation director) or remove him from his office (Tr. 2503). Like the district sales managers, Gorsich has a desk outside John's office (Tr. 429).

Shores' testimony, even if true, would not disprove John's supervisory status. Shores never claimed (contrary to his pretrial admission of supervisory status) that John was not a supervisor. Moreover, on cross-examination, Shores testified ''I don't recall'' when asked if he told John that he was ''no longer a supervisor,'' or ''no longer had the authority to discipline employees,'' or ''no longer had the authority to direct employees'' (Tr. 2611–2612).

Although Shores failed to positively claim that he had removed John's supervisory authority, the Company would not withdraw its reservation (Tr. 2664):

> JUDGE LADWIG: We're getting more and more testimony on Gene John. What's the position of the Company on whether he is or is not a supervisor?
>
> . . . .
>
> JUDGE LADWIG: Could you answer the question directly.
>
> MR. FLINKER: That he is not a supervisor.

The parties then stipulated that John attended department head meetings from August 1991 through March 1992 (Tr. 2670; G.C. Exhs. 102, 110–138). On being called as the next defense witness (when he denied virtually all Primack's credited testimony), John falsely claimed (Tr. 2681) that his title had been changed from circulation director to circulation manager.

This claim is refuted by Shores' admission that John's title had not been changed. It is also contrary to John's February 10, 1993 pretrial affidavit in which he stated under oath that he had ''served as the Company's circulation director'' since January 15, 1990, and that ''In that capacity, I assisted in the directing of the circulation department, which consists of three district managers, two full-time and one part-time clerk. I also have responsibility for the mailroom.'' (G.C. Exh. 139, pars. 1 & 2.)

On the 16th and 17th day of trial, the Company continued to litigate John's supervisory status, without casting any doubt on it. When the Company recalled Gorsich, he falsely claimed that his own title was circulation director (instead of circulation marketing director). On cross-examination he admitted swearing in his February 10, 1993 affidavit that he had served as the Company's circulation marketing director since October 1990. He admitted that nowhere in the affidavit ''does it say that you head up the circulation department.'' (Tr. 3174–3175.)

The Company in its brief (at 44) attempts to minimize the significance of John's status by contending that ''John was only involved in two isolated acts of alleged misconduct.'' After considering all the evidence, however, I infer that the Company raised this frivolous defense because John's coercive conduct toward Primack was considered indefensible.

Without any explanation, the Company has shifted its position from an unequivocal *admission* that Circulation Director Eugene John has been a supervisor at all material times (as stated by the local counsel in the Company's July 10, 1992 answer) to finally a positive *denial* (as stated by the same local counsel on the 14th day of the trial, after the overwhelming evidence was to the contrary).

I find that the frivolous defense was raised in bad faith, that it unduly prolonged the trial, and that it constitutes an abuse of Board processes.

(4) Flagrant coercion found

I conclude that the Company, in a determined effort to obtain an additional antiunion letter to rid itself of the Union, resorted to threats to induce a holdout employee to sign a copy of the antiunion form letter that Thompson had distributed.

As found, when Circulation Director John's efforts on February 17 failed to persuade district sales manager Primack to sign the letter for the purported purpose of enabling the Company to have an NLRB election, John interrogated her at lunch on February 19 about her thoughts on the matter. On her insistence that ''she did not want to get involved,'' John reminded her of Publisher Shores' bad temper, said that Shores ''was a man that you did not want to make mad'' and ''a man that wouldn't forget,'' and told her that if she would sign the form letter petition, ''it would give Jack [Shores] what he wanted'' and she ''wouldn't have anything to worry about.''

I find, as alleged, that in this part of the February 19 conversation at lunch, the Company by John threatened the employee with reprisals if she refused to sign the petition (the form letter that Thompson had distributed). I find that the threat, and the interrogation in the context of the threat, violated Section 8(a)(1).

When Primack persisted in declining to sign the letter, John implied a threat by stating ''he did not want to be put in a situation where he would have to—'' then stopping himself. He next warned of a ''housecleaning,'' stated that ''those who signed with Jack would have nothing to worry about,'' but threatened that ''those who did not, would.''

I find, as alleged, that in this part of the February 19 conversation, the Company threatened the employee with discharge (in a ''housecleaning'') if she refused to sign the antiunion petition, further violating Section 8(a)(1).

Two days later, on February 21 John made it clear that he was referring to Thompson's antiunion form letter when he referred to signing the petition. He admitted to Primack that he had placed the form letter on her desk. He told her to take it home over the weekend and give it ''careful consideration.''

I find that by threatening Primack on February 19 with reprisals and discharge—in the context of John's weeklong campaign to induce her to sign Thompson's antiunion form letter and his furnishing her with a copy of the letter to sign—the Company *flagrantly* coerced her to support Thompson's (and the Company's) campaign to get rid of the Union.

5. Thompson's agency status

As pointed out in the General Counsel's brief, citing *Dentech Corp*., 294 NLRB 924, 925–928 (1989), the Board has long held that when an employer places a rank-in-file employee in a position in which employees could reasonably believe that the employee spoke on behalf of management, the employer has vested the employee with apparent authority to act as the employer's agent and the employee's actions are attributable to the employer.

The evidence indicates that under this doctrine of apparent authority, the Company would be responsible for Thompson's actions. The evidence also indicates that the Company, by directly supporting Thompson's antiunion campaign, made her its agent in fact.

As found, the Company permitted Thompson at first to use Advertising Director Charnock's office, both in and outside Charnock's presence, to solicit signatures on an antiunion petition. After a complaint from the Union, the Company instructed Thompson to stop taking employees into Charnock's office to solicit their signatures, but it failed to discipline Thompson or notify the employees that it disavowed her conduct.

Despite the longstanding requirement that union business not be conducted on company time and despite the complaint from the Union, the Company failed to instruct Thompson to stop soliciting employee signatures on company time. The solicitation continued at the employees' work stations.

Circulation Director John granted Thompson's request that he tell the district sales managers that she wanted to talk to them (on company time about the antiunion petition), telling the employees to ''make sure'' to see her. Thompson later talked to the employees for an hour about signing the antiunion petition, while they were at work, answering telephones at the front counter. Both John and the employees' other supervisor, Circulation Marketing Director Gorsich, were present part of the time, but did nothing to stop the lengthy solicitation.

When only 9 of the 33 bargaining unit employees signed Thompson's antiunion petition, Publisher Shores took an active role in encouraging employees to sign it. He spent an entire day in meetings with groups of employees, expressing his opposition to the Union, promising to protect their jobs and benefits if they signed the petition, and forewarning them of a prolonged delay in the expected wage increase unless a majority of them signed the petition.

In these meetings, Shores admittedly did not tell the employees expressly that Thompson's antiunion campaign was not on behalf of the Company, nor tell them that she was acting on her own or that the Company had nothing to do with the petition.

Gorsich repeatedly told nonsigning employees that there was no riding the fence and that they must make a decision whether or not to sign the antiunion petition, even though a large majority of the employees had already chosen to remain with the Union by refraining from signing it. As found, his purpose was to encourage the nonsigners to change their choice by signing the antiunion petition—not suggesting any way to indicate their choice other than by signing the petition.

Both Gorsich and John interrogated employees about supporting the antiunion petition, and John threatened them with reprisals if they refused to sign the petition.

The Company further indicated to employees that it had collaborated with Thompson in planning the antiunion campaign, by telling them that certain comments Thompson made in soliciting their signatures were ''not the way it was supposed to [be] proposed.''

Finally, 2 months after the Company began openly supporting Thompson's antiunion campaign and when 16 of the 33 bargaining unit employees had signed Thompson's petition or antiunion letters—1 short of a majority, if all 16 signatures could be validly counted—John conducted a weeklong campaign to induce another employee to sign a form letter that Thompson had distributed. John placed a copy of the letter on her desk, after flagrantly coercing her with threats of reprisals and discharge unless she signed the letter.

In light of this credited evidence, I find that the Company not only vested outside sales representative Thompson with apparent authority to act as its agent, but directly supported her antiunion campaign, making her its agent in fact. I therefore find that the Company is responsible for her conduct and that it coerced the employees—indirectly by her conduct and directly by the conduct of Publisher Shores and Supervisors John and Gorsich—to sign the antiunion petition and letters, violating Section 8(a)(1).

D. *Bad-Faith Bargaining*

1. Negotiations until majority determined

Although Publisher Shores threatened on December 20 to delay the promised negotiations on economic issues until majority support of the Union was determined (to encourage employees to sign Thompson's antiunion petition, as found), the Company decided to have its local counsel engage in the negotiations in the meantime. Shore testified (Tr. 2582):

> I explained to Mr. Flinker the reason I wanted him to handle the negotiations was because there was an anti-Guild petition being circulated and a number of employees had told me they did not want to be in the Guild.

The complaint alleges that in the negotiations that resumed on January 14, the Company engaged in bad-faith bargaining by (a) its agent Thompson's unlawfully soliciting employees' signatures on an antiunion petition, (b) Publisher Shores' and Supervisors John's and Gorsich's coercing the employees to support the antiunion campaign, and (c) its reneging on the

agreement it had reached with the Union on all noneconomic proposals.

2. Reneging on tentative agreement

Regarding the Company's reneging on the agreed Guild shop and dues-deduction provisions (as it in effect admitted in its brief at 94–95), I find the evidence clear that the Company did so in furtherance of its unlawful campaign (through its agent Thompson, Publisher Shores, and supervisors) to get rid of the Union.

I also find that the Company reneged on two other agreed provisions included in the December 4 agreement on noneconomics issues. Both were included as noneconomic provisions because they involved no additional expense to the Company. In the December 4 tentative agreement (G.C. Exh. 49), confirmed by Attorney Tannler on December 5, the Company and Union agreed as follows (p. 11, art. 16):

> Section 4. During the term of this contract the Publisher will continue to pay the full cost of supplemental health insurance under the Social Security Medicare program for those employees who qualify for and subscribe to the program.
>
> Section 5. The Publisher agrees to implement a $2 deductible prescription drug program for all employees covered by this contract, consistent with the $2 prescription drug program now offered other employees of The Independent.

On January 14 the Company proposed to omit Section 4 entirely from the agreement and to raise the deductible in Section 5 (G.C. Exh. 51, p. 2, art. 16):

> Section 4. Delete.
>
> Section 5. The Publisher agrees to implement a $10 deductible proscription drug program ($4 deductible for generic drugs) for all full-time employees covered by this Agreement.

In the negotiations that day and on January 24 and February 12 and 13, the Union insisted that the Company abide by its tentative agreement (Tr. 691–692, 700, 716, 943; G.C. Exh. 10 pp. 2, 55).

The Company admits in its brief (at 94–95) that its January 14 proposal ''did delete the tentative agreement previously relating to the publisher's assuming the cost of the Medicare supplement'' and ''revised the tentative agreement relating to prescription drugs by increasing the deductible to $10.00 for name brand drugs and $4.00 for generics.'' The Company argues, however, that it ''must be emphasized'' that these provisions that it rescinded ''were reached almost four year ago''—ignoring the fact that the Company by Attorney Tannler agreed to them in the December 4 tentative agreement, which Tannler confirmed on December 5 after conferring with Shores.

The Company also argues (at 101–102) that the Medicare supplement provision is prohibited by the Medicare statute, without citing any authority (Tr. 890). I reject the unsupported argument as frivolous (like the Company's defense that Circulation Director John is not a supervisor).

It is well established, as held in *Mead Corp. v. NLRB*, 697 F.2d 1013, 1022 (11th Cir. 1983), that

> [t]he withdrawal of . . . tentative agreements does not in and of itself establish the absence of good faith. . . . However, withdrawal of a proposal by an employer *without good cause* is evidence of a lack of good faith bargaining by the employer in violation of Section 8(a)(5) of the Act where the proposal has been tentatively agreed upon. [Emphasis added.]

The Company has failed to show good cause for reneging on these two agreed provisions in the December 4 tentative agreement, as well as on the Guild Shop and dues-deduction provisions as part of its campaign to get rid of the Union. I find that its reneging on them is evidence of a lack of good-faith bargaining.

3. Bargaining as delaying tactic

The evidence indicates that the Company had no intention of reaching an agreement with the Union, but instead was using Local Counsel Flinker's negotiations as merely a delaying tactic until enough employees could be induced to support Thompson's company-assisted campaign to get rid of the Union.

As found, Thompson's campaign against the Union received little support before Publisher Shores took an active role on December 20, spending the entire day making antiunion speeches to groups of employees and coercively encouraging the employees to sign Thompson's antiunion petition. Also as found, on January 6 when Supervisors John and Gorsich were interrogating employees about why they had not signed the petition and on being told by one of them that he thought it was ''a dead horse issue,'' the supervisors insisted it was ''far from being dead'' and John threatened the employees with reprisals if they did not sign the petition.

Despite these circumstances and the Company's decision to renege on part of the tentative agreement on noneconomic issues, the negotiations proceeded on economic issues. By the time of the fourth bargaining session on February 13, the parties had narrowed their differences to the point that Flinker ''thanked the Guild . . . for the progress that had been made that day'' and ''said that it appears like we're getting off dead center.'' (Tr. 65, 714–716, 946–949; G.C. Exh. 55.)

The evidence shows, however, that Shores had other plans.

Circulation department employees Adams and Bartlett had signed antiunion letters after Supervisors John and Gorsich threatened them on January 6 with reprisals. Between that date and February 13, as found, 4 additional employees signed antiunion letters, making a total of 16 signatures when added to the 10 signatures on Thompson's petition. This was 1 less than a majority of the 33 bargaining unit employees, if all 16 signatures could be validly counted.

Beginning the following Monday, February 17, as found, the Company by Circulation Director John engaged in a weeklong campaign to induce district sales manager Primack to sign Thompson's antiunion form letter. Primack finally signed the letter on Saturday, February 22, after John flagrantly coerced her with threats of reprisals and discharge and left the letter on her desk to sign.

It was under these circumstances that Local Counsel Flinker left the February 13 negotiations to get Shores' approval of a proposed package for reaching a total agreement. Shores rejected the package and refused to authorize Flinker

to make a counterproposal on his return that afternoon to the bargaining table. Flinker instead promised a counterproposal at the next bargaining session, which he agreed could be held 3 weeks later on March 4. That meeting was never held. The Company canceled it on March 2, when it withdrew its recognition of the Union. (Tr. 716–717, 949–950.)

After weighing all the evidence, particularly the Company's continuing coercive campaign to get rid of the Union, I find that Publisher Shores was using the resumed negotiations as a delaying tactic and that he had no intention of bargaining in good faith and reaching an agreement with the Union. I therefore find, as alleged, that the Company was engaging in bad-faith bargaining in violation of Section 8(a)(5) and (1).

E. *Withdrawal of Recognition*

On March 2, the Company sent the Union a letter, claiming that it ''has received objective evidence demonstrating'' that the Union ''no longer represents a majority of the employees in an appropriate unit'' and stating that it ''is withdrawing its recognition'' of the Union and ''will not be bound by the terms of any collective bargaining agreement'' with the Union (G.C. Exh. 11).

The Company contends in its brief (at 1) that the Company withdrew recognition and ceased bargaining ''based on a good faith doubt of the majority status of the Guild,'' and (at 118) that the Union's ''loss of majority status was not tainted or caused'' by the Company's ''alleged misconduct.'' I disagree.

As held in *United Supermarkets v. NLRB*, 862 F.2d 549, 553 fn. 6 (5th Cir. 1989):

> It is well-settled that a good faith doubt of majority status can arise only in a context free of the coercive effect of employer unfair labor practices. . . . Thus, an employer cannot lawfully withdraw recognition from a union if it has committed as yet unremedied unfair labor practices that could have reasonably tended to contribute to employee disaffection from the union.

The General Counsel contends (in br. at 37–38) that the Company's bad-faith bargaining, solicitation of signatures for the antiunion petition, and unlawful statements undermined the employees' support for the Union. Similarly the Union in its brief (at 27–28) contends that the Company's ''active solicitation of employee statements of withdrawal . . . its bad faith bargaining as well as [its] other unlawful conduct . . . tainted any assertion . . . of a good faith doubt.'' I agree.

I find the Company engaged in unfair labor practices that could have reasonably tended to contribute to employee disaffection from the Union and that this unlawful conduct has tainted any assertion by the Company of a good-faith doubt in the Union's majority status. In view of this finding, I deemed it unnecessary to rule on the General Counsel's and Union's contention that some of the signatures on the petition and letters could not be validly counted, even if Thompson were not the Company's agent in the antiunion campaign.

I also find that on March 2 the Company unlawfully repudiated its collective-bargaining agreement with the Union and unlawfully withdrew its recognition of the Union as the exclusive representative of the employees in an appropriate bargaining unit. In doing so the Company failed and refused to bargain in good faith, violating Section 8(a)(5) and (1).

An agreed appropriate unit (modified by the advertising/-marketing director being replaced by a marketing and promotions manager and a retail advertising supervisor, Tr. 1121, 1130, 2386; G.C. Exhs. 61, 62) is

> [a]ll editorial, advertising, commercial, circulation, janitorial, and maintenance employees, but excluding the publisher, editor, marketing and promotions manager, retail advertising supervisor, classified advertising supervisor, circulation director, circulation marketing director, city editor, managing editor, business manager, office manager, executive secretary, and all other employees in the mailroom, pressroom, and composing room.

F. *Alleged Retaliation Against Union Supporters*

1. Threats of retaliation

On January 6, as found, Circulation Director John and Circulation Marketing Director Gorsich, in John's office, held a long meeting in which John threatened district sales managers Adams and Bartlett with reprisals to coerce them to sign Thompson's antiunion petition. After the meeting, both employees signed and sent antiunion letters to Publisher Shores.

In this meeting, John revealed to the employees that Shores was requiring John to induce circulation department employees to oppose the Union. John stated that ''if he did not produce names from his department, his job would be at stake.'' As found, John reports directly to Shores.

On February 17, John revealed to another circulation department employee, district sales manager Primack, that Shores was still urging John to engage in such conduct. John told Primack that ''if you give them your name . . . I know it'll get them off my back and this department's back.'' Shores needed one more employee signature for the Company to be able to assert that a majority (17 of the 33) employees opposed the Union.

On February 19, when Primack still refused to sign the petition, John told her that Shores had a bad temper and warned that Shores ''was a man that you did not want to make mad'' and ''a man that wouldn't forget.'' John also told her that signing the petition ''would give Jack what he wanted'' and she ''wouldn't have anything to worry about.''

In the conversation, John agreed that Primack's job performance was good, but told her, ''That's not the issue. . . . [T]he issue [is] the petition.'' John next warned her about a ''housecleaning,'' stating that ''those who signed with Jack would have nothing to worry about,'' but threatening that ''those who did not, would.''

The complaint alleges that since these threats were made, the Company has taken discriminatory action against eight employees, all of whom had refused to sign the petition.

Before the trial the Company promoted Rebecca Thompson to manager of marketing and promotions. It also promoted Barbara Baker to telemarketing advisor, Elaine Johnson to retail advertising supervisor, and James Williams to classified advertising supervisor. All four of them signed the

petition or an antiunion letter. (Tr. 2535–2539; G.C. Exhs. 17, 62; R. Exh. 63.)

2. Discipline of Matthews and Rohr

a. *Disciplinary writeup rule*

The Company had a standing rule, since the department head meeting on Monday, August 19, that ''When you have a case of disciplinary action for a *serious mistake and neglect of duty* [emphasis added], you write it up and have the employee sign it,'' with a copy to the union representative (G.C. Exh. 111 p. 4; R. Exh. 76, p. 4).

When Shores was on vacation from January 25 to February 3 (Tr. 3243), there were two incidents that department supervisors considered too minor for any disciplinary action.

One incident, on January 27, involved Carol Rohr's telling fellow employees at the front desk about a complaint she had handled with an irate subscriber. She related that the subscriber called Editor James Davis a son-of-a-bitch. When Rohr later explained to Circulation Marketing Director Gorsich what had happened at the front counter, Gorsich told her that he knew, contrary to rumors, she would not say anything derogatory about the editorial department and that he was sorry that people had overheard the conversation. Rohr offered to apologize to the editor about the rumor, but Gorsich said he did not think there would be a problem and he would talk to Davis. The next day, Rohr apologized anyway to Davis, who treated it ''like it was nothing.'' There was no mention of any disciplinary action. (Tr. 255–258, 327–334, 909, 2106–2108.)

About January 29, Stacy Tharp Hilbert, a part-time circulation clerk on extended probation for poor performance, resisted a decision by both her supervisors, Gorsich and Circulation Director John, that circulation clerk Rohr should not work that afternoon in her place. Hilbert was upset and was complaining. Rohr told her that ''it's not that I didn't want to but they stated that I should not work the afternoon for her.'' After awhile, switchboard operator Melanie Bednar Matthews (who was a business office employee) told Hilbert to stop complaining about not getting her way. Matthews called Gorsich and told him he should do something about it. Gorsich later told her she was not to tell him what to do. She said she was just trying to help the circulation department so they could get caught up, but they were letting Hilbert do nothing. (Tr. 258–263, 336–338, 483–485, 505, 546–547, 909, 2107.)

That afternoon two supervisors, Gorsich and Business Manager Inzetta, met informally with the three employees and stated that the bickering at the front counter must stop. Gorsich stated that he set the hours and that they ''had to work things out.'' Obviously referring to Hilbert, who had caused the trouble by continuing to complain about the decision he and John had made, Gorsich added that ''if somebody was not happy with their working conditions, then they should find another job.'' (Gorsich had extended Hilbert's probationary period because of ''some problems with her performance.'') Inzetta said the business office and circulation department employees were to work together as a team. Both Gorsich and Inzetta assured the employees that nothing would be placed in their personnel files about the incident. Inzetta credibly testified that if it had been a formal disciplinary meeting, it would have been proper to put something in the file. (Tr. 262–263, 339–340, 395–396, 435–437, 464, 469, 486, 508, 2107.)

b. *Change in writeup rule*

On February 17, at the Monday morning meeting of department heads, Shores announced a new writeup rule. Minutes of the meeting show that Shores stated that ''Even if on the first incident you talked to them, write it down'' and ''the second time that you talk with them you have to give a copy to them and the union.'' (G.C. Exh. 102, p. 4.)

There is no indication that this change in the rule was unlawfully motivated. The question is whether Shores was discriminatorily motivated later that week when he applied the new rule retroactively, disciplining Matthews for one of the incidents and Rohr for both of the incidents that occurred about 3 weeks earlier.

In doing so, Shores disciplined the two union supporters, even though Gorsich made no mention of any discipline in the first incident and both Gorsich and Inzetta had considered the second incident too minor for any disciplinary action being taken under the former rule. Shores directed that Gorsich prepare memos to the file. Shores then disciplined the two employees, treating the memos as second-offense written warnings, serving them both on the employees and the Union.

c. *Context of disciplinary action*

On this same Monday, February 17, the Company by Circulation Director John began a weeklong campaign to persuade employee Primack to sign a letter opposing the Union. As discussed above, this was 4 days after Shores refused to approve the proposed package for reaching a total agreement with the Union, at a time when the company-assisted antiunion campaign had obtained the signatures of 16 employees, one short of a majority of the 33 bargaining unit employees.

Primack, however, was still continuing on Wednesday, February 19, to resist signing a copy of Thompson's antiunion form letter, even when John placed a copy of the letter on her desk after flagrantly coercing her with threats of reprisals and discharge.

If Primack's resistance to signing the letter could not be overcome, despite such threats, the earlier incidents involving Matthews and Rohr presented the possibility of changing the ratio of signers and nonsigners by reducing the number of union supporters on the payroll. Both had refused to sign the antiunion petition or letter, and Matthews was on the union executive board (Tr. 541).

Hilbert, the probationary part-time employee who had caused the front-counter bickering, had already signed Thompson's form letter on February 10 (R. Exh. 66). The circumstances of Hilbert's signing the form letter—after Shores' return from vacation (G.C. Exh. 132 p. 1) and over 3 weeks after Thompson had distributed the letter for employees to sign—are not revealed in the evidence. She did not testify.

Matthews (who was refusing to sign either Thompson's petition or the form letter) had complained to Shores that ''people were stabbing each other in the back and harassing each other if you were or were not on the petition'' (Tr. 482).

Rohn had refused to sign the petition in Advertising Director Charnock's office, and she would not commit herself to sign the petition when she told Shores ''I worked for him no matter whether I worked with a union or without a union'' (Tr. 250). When she later complained to Gorsich about being ''really frustrated'' from the ''very tense'' situation ''stemming from'' Thompson who was ''pressuring'' her (to sign the petition), Gorsich ''stated that I just needed to be above Becky [Thompson] or anybody who I thought was giving me a problem.'' He told Rohr, however, that ''[y]ou're either going to be for the union or you're going to be against the union.'' She adamantly refused to sign the petition. (Tr. 252–253, 353–354.)

The evidence is clear that the Company was aware that both Matthews and Rohr were remaining loyal to the Union.

It was in this context that on Friday, February 21 (the day before Primack finally signed the form letter opposing the Union), Shores ''overrode'' the department supervisors and disciplined the two union supporters along with Hilbert, the probationary employee who caused the ''bickering'' incident (G.C. Exhs. 18, 19; R. Exh. 79, p. 2).

Both Matthews and Rohr resigned (Tr. 488; G.C. Exhs. 20, 21). Shores replaced them with new employees Carole Chambers and Sandra Meese, who signed Thompson's form letter (R. Exhs. 59, 64). The Company used their signatures to support its claim of ''objective evidence'' that the Union on March 2 no longer represented a majority.

Thompson obtained Chambers' signature on February 27 and Meese's signature at the switchboard on February 29 (Tr. 2818–2820). On receiving the letters, Shores assisted the new employees in the proper wording of the letters, as he earlier had done on January 13 when David Crookston submitted his antiunion letter (Tr. 2423–2427; R. Exh. 60).

d. *Discriminatory motivation*

(1) Memos to file used as written warnings

It was apparently sometime after Primack failed on Wednesday, February 19, to sign an antiunion letter—even after being flagrantly coerced to do so—that Shores instructed Gorsich to prepare disciplinary reports (in the form of memos to Shores and the personnel files) on the January incidents.

The wording of the February 21 disciplinary reports—as well as the fact that the reports showed copies being sent to the Union, as if the reports were formal, second-offense written warnings—indicate that the Company was discriminatorily motivated.

Gorsich claimed in his February 21 disciplinary report of the January 27 ''Counter Incident'' (G.C. Exh. 19) that he had been told that Rohr ''was cursing and 'ranting and raving' at the counter in front of other employees.'' I find this unsupported claim, in conflict with Rohr's credited account of the incident, was another one of Gorsich's fabrications to help the Company's cause. Gorsich also claimed in the report that he told Rohr that ''cursing or any similar behavior was unacceptable and further incidents of this type would result in disciplinary action up to and including termination.'' I find that this was another fabrication. Rohr credibly testified that there was no mention of any disciplinary action.

Although both Gorsich and Inzetta assured Matthews, Rohr, and Hilbert at the informal meeting on the ''bickering'' incident about January 29 that ''they would not be written up,'' Gorsich not only stated in his February 21 disciplinary report that the three employees were warned, but claimed that they ''were warned that *future acts of misconduct* would result in disciplinary action up to and including termination.'' (G.C. Exh. 18.)

Thus, Gorsich claimed that he warned the employees in January of ''disciplinary action up to and including termination,'' not for a recurrence of the front-counter bickering, but for any ''future acts of misconduct.'' I find that this unsupported claim is another fabrication.

I find that by preparing the disciplinary report, containing that purported warning, to be served on both the employees and the Union, the Company intended to clearly convey a written warning to the employees. Shores admitted (Tr. 2603–2604) that the document does not indicate that it is only an oral warning and that he did not inform Matthews and Rohr that the reports were *not* written warnings (Tr. 2603–2605).

Citing Shores' testimony, the Company argues in its brief (at 47) that the February 21 documents ''were simply memos of verbal warnings.'' I note, however, that in the Company's pretrial ''Statement of Position,'' signed by the same counsel on May 8, 1992 (the year before the trial), the Company asserted (G.C. Exh. 106, p. 48):

> On February 21, Gorsich duly issued *written warnings* to [the three employees]. . . . Shores and Gorsich also met with each of the three and explained the reasons for their receiving *written warnings*.

(2) Discipline of Matthews

Matthews thought she was being called into Shores' office on February 21 to be complimented ''for doing a good job, because I was doing all these extra jobs. I had no idea I was getting a letter'' (Tr. 494). She had many duties, and when she was caught up, ''I would go to different people and ask them for stuff to do'' (Tr. 476–477).

The first meeting was short. Shores ''shoved over a letter at me'' and said, ''I will not tolerate bickering at the front counter'' and stated ''it is union policy.'' Matthews said to Gorsich, who was present, ''Mike . . . what's going on, we're not supposed to have a letter.'' She explained that ''this had happened . . . weeks before and we were getting along fine, there was no problem.'' She was crying, but Gorsich ''just sat there.'' She got up and left the office. (Tr. 487–488.)

Matthews returned to the business office and told Mark Schott (the new business manager) and Jill Griffiths (the office manager) she was ''putting in my two weeks' notice. . . . I was told I wasn't going to get a letter, I received a letter . . . they're just trying to shove me out the door because I'm not on the petition and I'm not going to take it anymore.'' (Tr. 488; G.C. Exh. 56.) While refusing to sign Thompson's antiunion petition, as found, she had earlier complained to Shores about employees being harassed over whether they were or were not on Thompson's antiunion petition.

When Matthews told Shores she had put in her notice, he asked her to come back into his office. There, with Gorsich present, Shores claimed it was not his intention for Matthews

to put in her notice. But he then proceeded to harshly criticize her work.

In Shores' office, Matthews asked, ''what choice do I have when I get a letter when I'm not supposed to? . . . I do my job, I help the department, and it's Stacy [Hilbert] that was causing the problems, nobody else.'' Not responding, Shores began criticizing her work for the first time. He claimed that she was rude, that he had letters from other people saying that she was rude on the phone, and that he had seen her on a rampage out front. She was crying and said, ''Mike, stick up for me . . . you know I haven't done anything.'' Gorsich responded that ''you're short on the phone because you're so busy.'' (Tr. 488–489, 2500–2501, 2606–2610.)

Shores finally said, ''Well, are you going to stay or are you going to leave.'' Matthews answered, ''why would I stay after you just . . . tore me to shreds?'' Shores suggested that she compose herself and return to work. (Tr. 489.)

When asked on cross-examination why she reached the conclusion that she was given the letter because she had not signed the petition, Matthews answered that two management people (Gorsich and Business Manager Inzetta) said, ''we were not to get a letter.'' Then when her ''boss'' Inzetta was gone, ''I get a letter. . . . [I]t was obvious that they wanted me or Carol [Rohr] or both of us out of the paper. When three people go into a meeting and two come out in [tears] and one comes out smiling, something's not right.'' She explained that ''Three employees get reprimanded. . . . I come out and quit. One [Rohr] goes and throws up. And the other girl [Hilbert] comes out smiling like nothing ever happened.'' (Tr. 526–527.)

(3) Discipline of Rohr

Shores' disciplinary meeting with Rohr was also short. As Rohr credibly testified (Tr. 264–265):

> [Shores] stated that there was not time for me to read the letters [for the two January incidents] but I took the time to skim over the letters because I had no idea what the letters were about. . . . I was in quite a shock because . . . I did not know anything about these letters or that there was a problem.
>
> I stated to Mr. Shores that I was not cussing at the front counter. . . . [H]e more or less pointed his finger and stated in a very stern voice that there would be no cussing at the front counter.
>
> And I knew at that point that there was no chance for me to even discuss what had happened in these letters with him, so I left his office.

Rohr asked Gorsich for a little time to go to the restroom (where she vomited, Tr. 341, 527). ''I was quite upset in regards to these letters as I had no idea that anything like this was being written because I thought we had discussed this in our private conversations and meetings and that everything was fine. . . . I had two letters and . . . if I get a third letter this means that I'm going to be fired. And I didn't understand why I had the two letters and I thought that it was also a way of getting me to get out because of the fact that I hadn't signed that petition [against] the union.'' (Tr. 268–269.)

The following Monday, February 24, Rohr gave 2 weeks' notices to her supervisors, John and Gorsich (Tr. 270–271; G.C. Exhs. 20, 21). She credibly testified (Tr. 272–273):

> Mr. John, my supervisor, stated that he didn't want to accept my reservation. . . . Mr. Gorsich, my other supervisor, stated that he didn't want this to happen.
>
> . . . .
>
> He stated that Mr. Shores had told him that due to union policy Mr. Gorsich had to write these letters so that it could be under the union rules and regulations. . . . [T]hey asked me if I wanted some time to think about it.
>
> At that time, I stated no, that *I felt that it was just a matter of time before there would be another letter written and I would be fired*. [Emphasis added.]

e. *The company's defenses*

The Company points out in its brief (at 47) that Shores was on vacation when the incidents occurred the last week in January and contends that ''On February 21, when Gorsich told Shores about the two incidents, Shores asked Gorsich whether he had documented them in any way. Upon learning that no documentation had occurred, Shores told Gorsich to prepare memos on the subject.''

This contention is not persuasive. The Company ignores the fact that in minutes of the department head meeting on February 17, when the disciplinary writeup rule was changed, Shores specifically referred to ''an incident at the counter involving 3 of the girls when he was on vacation'' (G.C. Exh. 102, p. 4).

Shores waited until February 21 to discipline union supporters Matthews and Rohr. Primack was then still refusing to sign a letter opposing the Union. Having failed to obtain the signature of a 17th employee to enable the Company to claim ''objective evidence'' of the Union's purported lack of a majority in the bargaining unit of 33 employees, Shores needed to reduce the number of employees loyal to the Union.

As it turned out, the circulation department employee being coerced by Circulation Director John yielded to the coercion and signed the antiunion letter a day later on Saturday, February 22, providing the Company with the needed 17th signature. Disciplining Matthews and Rohr actually resulted in a delay in the Company's withdrawal of union recognition. They resigned that Friday and Monday, but instead of leaving immediately, they gave 2 weeks' notice and remained on the job, blurring any claim of union loss of majority status.

The Company waited until Thompson persuaded the replacements to sign her antiunion form letter before withdrawing its recognition of the Union on Monday, March 2 (2 days before the scheduled March 4 negotiating session with the Union). Meanwhile, Shores (1) obtained the signed antiunion petition from Thompson, (2) checked the names on the petition and the antiunion letters he had received, and (3) assisted the new employees in providing the proper wording on the form letters they signed (Tr. 2413–2418, 2425–2427, 2817–2818; G.C. Exh. 17; R. Exh. 67).

The Company does not acknowledge that Shores made any change in the disciplinary writeup rule. Neither does it offer any justification, under the new rule, for his treating these

first offenses as if they were second-time offenses, requiring written warnings to be served on the employees and the Union.

The Company contends in its brief (at 48) that ''employees who had engaged in similar misconduct in the past had also received such memos.'' It cites two documents in evidence. One of the documents (R. Exh. 77) is a formal disciplinary letter, not a memo to the file. It involved conduct at the front counter ''When it [became] necessary for [the classified advertising manager] to tell [the employee] to cease a counter-productive conversation.'' This occurred in April 1985, over 5 years before Shores became the publisher and changed the disciplinary writeup rule.

The other document (R. Exh. 78), written since Shores arrived, does not involve conduct at the front counter. It involves ''willful neglect of duty'' in October 1990. It is a memo to the file, but it is a handwritten document which, on its face, shows that it was not served on either the employee or the Union. It provides no precedent for the February 21 formal memos being used as written warnings.

The Company contends that ''There is no knowledge [of Matthews' and Rohr's union sympathies] and there is no antiunion animus.'' Evidently the Company is ignoring the credited evidence to the contrary and is relying on the discredited denials that Thompson ever told Shores who signed the antiunion petition, as well as the Company's clearly false denial that it participated in the antiunion campaign.

The Company further contends in its brief (at 50) that ''if Shores were seeking to single out Guild supporters for discrimination, then he certainly would not have issued a memo to [Hilbert], who had on February 10, a week before, sent him a letter saying that she did not wish the Guild to be her representative.''

To the contrary, the only feasible way the Company could belatedly discipline Matthews and Rohr would be to also discipline Hilbert, the part-time employee on extended probation for poor performance. The Company was aware that Hilbert had caused the trouble with the full-time employees when she continued to complain about the decision of her supervisors, John and Gorsich, that she must work that afternoon. As found, Gorsich was referring to her when he stated that ''if somebody was not happy with their working conditions, then they should find another job.'' Hilbert would be pleased that she was not singled out as the one to be punished, or punished more severely, for causing the trouble.

To discipline Matthews and Rohr without also disciplining Hilbert would obviously be indefensible.

f. *Discrimination found*

I find that the General Counsel has made a prima facie showing that Matthews' and Rohr's continued support of the Union, by refusing to sign Thompson's antiunion petition or letter, was a motivating factor in the Company's belated decision to discipline them. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The Company contends in its brief (at 49–50) that it would have disciplined Matthews and Rohr even in the absence of the antiunion campaign and argues that in issuing the memos to the three employees, it ''was uniformly applying its disciplinary policy across the board without regard to union sympathies.'' I find that the credited evidence shows clearly the contrary and that the Company has not met its burden of proof on the contention.

As alleged in the complaint I find that the Company, by disciplining Melanie Matthews and Carol Rohr on February 21, discriminated against them in regard to condition of employment to discourage membership in the Union, violating Section 8(a)(3) and (1).

g. *Necessary remedial action*

The Company implies in its brief (at 45 fn. 5) that there can be no remedy of reinstatement and backpay, even if Matthews and Rohr were discriminatorily disciplined, because the Regional Director found insufficient evidence to support the Union's allegation of constructive discharge (R. Exh. 19).

I disagree. In the circumstances of this case, I find that reinstatement and backpay for the two employees is a necessary remedy for the alleged and proved unlawful conduct, to effectuate the purposes of the Act.

As found, while the Company was negotiating with the Union on economic issues, it was continuing to actively support Company Agent Thompson's antiunion campaign.

Failing in the effort to induce half of the employees to abandon the Union, Shores caused union supporters Matthews and Rohr to resign. He used his new disciplinary writeup rule as a pretext for belatedly disciplining them, overruling the promise of the department supervisors not to place anything in their files. He then treated as written warnings the memos to the file that he required one of the supervisors to write about 3 weeks after the incidents occurred.

In doing so, Shores placed the two employees in the position of either resigning or fearing for good reason that their good work records would be tarnished by a pretextual discharge. As Rohr told her supervisors when she resigned, ''I felt that it was just a matter of time before there would be another [disciplinary] letter and I would be fired.''

I find that if the Company were ruled immune from providing any remedy to these two victims of its unlawful conduct—merely because they resigned in fear of being fired, giving the employer 2 weeks' notice, instead of being forced to resign—the Company would be rewarded for its wrongdoing. Moreover, the ruling would convey the wrong message to remaining members of the bargaining unit.

The Company would have succeeded in undercutting the Union's bargaining strength by permanently removing two loyal union supporters from its payroll, including a member of the union executive committee. The employees, having observed the obvious discrimination, would undoubtedly get the message that statutory protection for the exercise of their own Section 7 rights could not be trusted.

Under these circumstances I find that an order requiring the Company merely to cease and desist from such unlawful conduct would be an inadequate remedy. I find that the Company must also offer reinstatement to Melanie Matthews and Carol Rohr, with backpay.

3. Changes in job duties of Meyer and Heather

a. *Context of the changes*

Previously, district sales managers (working on the second floor in the circulation department) had been assigned to take turns, going downstairs and answering phones at the front

counter from 4:30 p.m. (when the daytime clerks leave) until 6:30 p.m. (Tr. 1259, 2132–2133). It is undisputed that all three district sales managers, Adams, Bartlett, and Primack, were ''busy answering the phones'' at the front counter from 5:30 to 6:30 p.m. on December 17, when Company Agent Thompson was talking to them about signing the antiunion petition.

In September 1992, about 6 months after the Company withdrew its recognition of the Union, Stacy Tharp Hilbert (then working full time) ''left the Company'' (Tr. 1259, 2127, 2186). Circulation Marketing Director Gorsich testified that the district sales managers were then answering the phones 3 evenings a week from 4:30 to 6:30 p.m., and a part-time clerk was answering the phones (in fact, one of the phones, Tr. 1259) the other 2 evenings. According to Gorsich, ''I needed to replace Stacy's hours and I also needed to add some hours . . . to eliminate my district managers working those evening hours'' so they could ''do their field work at that time rather than have to be saddled with answering the phones.'' (Tr. 2131.)

Meanwhile, the Company had already hired a part-time switchboard operator, who told Meyer that the Company had not asked her if she would work the 4:30–6:30 hours (Tr. 1249).

Publisher Shores and Gorsich decided not to hire a full-time clerk to replace Hilbert (who had been paid the minimum, entry-level wage of $6.75 an hour), or to assign the new part-time switchboard operator additional hours. They decided instead to add 13 hours of the circulation department work to the workload of union supporter Virginia Meyer, a senior clerk who was working full time as advertising dispatch clerk at $9 an hour. Gorsich assigned her to work from 4:30 to 6:30 p.m. all 5 weekdays (replacing the part-time clerk on 2 of the days) and also from 1:30 to 4:30 p.m. on Tuesday. (Tr. 1186–1192, 2132, 2252; R. Exh. 69.) This did not eliminate all the district sales managers' work at the front counter. They continued to take turns working (with Meyer) from 4:30 to 6:30 p.m. (Tr. 1259).

Shores and Gorsich also decided to require union supporter Linda Heather to be Meyer's backup, performing clerical work (Tr. 2190–2191). Heather is the staff artist in the advertising department, being paid $11.25 an hour (Tr. 1431; R. Exh. 69).

The complaint alleges that the Company discriminatorily made these unilateral changes in job duties, ''including the assignment of less desirable job duties,'' in violation of Section 8(a)(1), (3), and (5) of the Act.

The principal question is whether the assignment of circulation department duties to Meyer (who was already working full time in the advertising department) and the assignment of part of Meyer's clerical duties for the first time to Matthews (who was working full time as an artist) was a continuation of the threatened reprisals, to cause these two loyal union members (like Matthews and Rohr in February) to resign.

As found, Circulation Director John had warned an employee in February that Shores ''was a man that wouldn't forget'' and further warned of a ''housecleaning,'' stating that ''those who signed with Jack [Shores] would have nothing to worry about,'' but threatened that ''those who did not, would.'' After these warnings, as further found, Gorsich participated with Shores in the discriminatory discipline of union supporters Matthews and Rohr, causing them to resign.

Meyer and Heather worked together in the ''Art & Dummy'' area on the first floor (R. Exh. 14) where on December 9, as found, they were excited about the Union's negotiating the tentative agreement on noneconomic issues, but Thompson told them they did not know what they were talking about. On December 19, when they were expressing their support of the Union at lunch, Thompson revealed to these vocal union supporters that she had been in communication with Shores, by insisting that there was no tentative agreement with the Union because Shores ''doesn't like it'' and would not accept it.

I infer that Thompson had reported to Shores both Meyer's and Heather's loyalty to the Union. In any event, Shores was aware that they had not signed the antiunion petition or a letter opposing the Union (R. Exh. 67).

b. *Additional duties assigned*

Virginia Meyer had been working in the advertising department from 7 a.m. to 3:30 p.m. each workday, except on Wednesday when she worked from 9 a.m. to 5:30 p.m.

On September 29, 1992, Gorsich met with Meyer and Linda Heather and announced Meyer's new hours, from noon to 8:30 p.m.—later changed, from 10 a.m. to 6:30 p.m. (Tr. 1195–1197, 1200, 2258–2259; G.C. Exhs. 64–66). As Meyer credibly testified (Tr. 1196):

> I told him . . . this won't work. . . . [T]here's no way I can get everything done [on her job in the advertising department] and work in circulation also. I said we're working on deadline every day as it is, and we're just barely making it now.

Despite Meyer's protests (including the nonrecognition of her seniority) and her suggestions (including assigning more hours to the new part-time switchboard operator), Gorsich told her no, this was final, it had been decided, she had no choice, and these were her hours. He was requiring her to work at the switchboard (as she had done in the circulation department years earlier, before she successfully bid on her present job) and to learn how to use the circulation department computer. (Tr. 1186–1190, 1195–1200, 1249.)

As Linda Heather credibly recalled (Tr. 1446), Gorsich told Meyer,

> A clerk is a clerk is a clerk is a clerk at the paper, and since he needed help and since Virginia was a clerk, he decided that the best thing to do was have Virginia, who was a clerk, come in Circulation and help out.
>
> . . . .
>
> I said, ''We used to have a part-time . . . dispatch clerk, and that person was laid off. . . . We also had a part-time artist and that artist was laid off. . . . Both Virginia and I have been working without the part-time person and just getting out our work.''
>
> I said, ''Why not take your two full-time employees out there that you have now and stagger their starting time to cover the late shift?''
>
> Then he got a little upset with me and he said, ''No, this has been decided before you came in. . . . We're

not even going to discuss it. This has been settled. This is the way it is.''

Also in the meeting, as Linda Heather credibly recalled, Gorsich said that ''Linda will be doing the dummies in the morning before Virginia comes in.'' Heather responded, ''That's fine. But who's going to be laying out the ads in the meantime? A lot of times in the day before I walk out, I get ads that are due that day that I have to handle first thing in the morning.'' Gorsich said, ''Well, then the salesmen will have to start doing their own ads then. You will be doing the dummies.'' (Tr. 1451.)

Thus, Gorsich was relieving one of the district sales managers from having to work at the front desk from 4:30 to 6:30 p.m. each day, but was announcing that the outside sales representative would have to perform some of their own ad layout designs while artist Heather was doing clerical dummy work.

c. *Meyer's excessive workload*

Elaine Johnson was present in this meeting. She had been promoted the day before to the position of retail advertising manager, replacing the retired Charnock as the advertising department supervisor over Meyer and Heather. (Tr. 1193, 2224; G.C. Exh. 62.)

On Monday, October 5, 1992, the first day of Meyer's new assignments, Johnson began giving her a daily assignment sheet of her continuing duties in the advertising department. The assignment sheets scheduled her to work 5-1/2 hours daily in the advertising department from 10 to 4:30 p.m. (with an hour off for lunch)—except on Tuesday, when she would work there only 2-1/2 hours from 10 to 12:30—before working 2 hours daily from 4:30 to 6:30 p.m. in the circulation department, except on Tuesday, when she would work 5 hours from 1:30 to 6:30 p.m. in the circulation department. (G.C. Exhs. 64–66.)

The assignment sheets listed her advertising department duties for the day. At Meyer's request, Johnson indicated on each assignment sheet the priority for each item (Tr. 1203, 2261–2262).

For example, on the Monday assignment sheet (G.C. Exh. 64), Johnson indicated the following work priority: (1) dummy for Tuesday newspaper, (2) proofing, (3) schedule legals and follow thru, (4) dummy for Wednesday Living, (and over the phone, Tr. 1206–1207), (5) proof anything else in box, and (6) divide remaining time until 4:30, half of time tear sheets and other half of time log. On Tuesday Johnson listed (G.C. Exh. 65): (1) dummy for the Wednesday newspaper, (2) proofing, (3) dummy for Weekender TV, (4) schedule for legals and follow thru, (5) log in ads as required, and (6) tear sheets as necessary.

Each day that week, Meyer listed (Tr. 1205–1210, 2263–2270) at the bottom of the assignment sheet, under the heading ''*Things Not Done*,'' the items she did not have time to do before going to the circulation department, as follows (emphasis added):

MONDAY

(1) ''*Mon Tear Sheets*,'' (2) ''Mail for Sat Paper,'' (3) ''Copies of Orders that need copies,'' (4) ''Filing of orders in order box,'' and (5) ''Papers for front file copies of Fri & Sat & Mon Papers.''

TUESDAY

(1) ''Legal ads Scheduled,'' (2) ''Log in ads,'' (3) ''Copies of orders needing copies & orders advanced,'' (4) ''Orders Not Filed,'' (5) ''*Mon Tear Sheets and Tues Tear Sheets*,'' (6) ''Sat Mon & Tues Mail,'' (7) ''Sat Mon & Tues paper for front File Copies,'' and (8) ''Any Proofing after 12:30.''

WEDNESDAY

(1) ''Log in orders, (2) ''Proofing after 3 pm,'' (3) ''*Tear Sheets Mon Tues & Wed*,'' (4) ''No copies of order made or advanced,'' (5) ''Mail Sat Mon Tues & Wed,'' (6) ''Papers for front file copies Sat thru Wed,'' and (7) ''Orders not filed.''

THURSDAY

(1) ''Orders logged in,'' (2) ''Orders copied as needed & advance beyond Mon,'' (3) ''Mail from Sat thru Thurs,'' (4) ''*Tear Sheets for Mon-Thurs*,'' and (5) ''Orders not filed.''

FRIDAY

(1) ''Logging beyond Tues,'' (2) ''No orders copied & advanced beyond Tues,'' (3) ''Mail from Sat thru M.B. [Market Basket],'' (4) ''*Tear sheets for Tues, Wed thru M.B*,'' and (5) ''Paper front file.''

Thus, when the Company cut Meyer's assigned hours in the advertising department from 37-1/2 hours a week to 24-1/2 hours, this resulted in some of the work—particularly the tear sheets—being carried over from day to day.

(Tear sheets are pages ripped from copies of the newspaper to show advertisers what ads were run and for billing at the end of the month. Johnson testified that advertisers require 1 to 4 copies with the billings, that one grocery company requires 320 tear sheets, and that other grocery stores need 40 to 100 copies. The outside sales representatives deliver a large majority of the tear sheets. If the tear sheets are not done, the sales representatives must spend the time to rip the pages from the newspapers themselves. Tr. 1212–1214, 2294, 2296, 2618.)

On Monday, October 12, 1992, Johnson did not provide Meyer with an assignment sheet. When asked about it, Johnson told Meyer to ''just do things the way you normally do them'' and ''do as much as you can do.'' (Tr. 1210.) Meanwhile, Johnson had been promising Meyer help in performing the ''Things Not Done,'' and had provided some help from herself, Heather, and the sales staff (Tr. 2264–2269).

Concerning the excessive workload, Meyer credibly testified (Tr. 1210–1212):

> Q. And what effect has the assignment to the switchboard in the circulation department had on your duties and responsibilities in the advertising department?
>
> A. Quite frankly, things are getting worse day by day. . . . [I]t looks like a mountain, my work area of newspapers where the tear sheets are not done. . . . [T]oday is April the 9th [1993] . . . I still have three days worth of March tear sheets to do before I can get to do March month end [tear sheets for billings] which every day just throws me further behind. Each month it's gotten worse. . . . Everyday, it just keeps adding up. We have stacks . . . of the day's paper. I get any-

> where from 50 to 75 copies. They're laying everywhere. *It's very upsetting. It's very stressful*. I've had Ms. Johnson come in and look at the work area. I have asked for help. Whenever I said, Elaine, please do something—the last time I said that, she said, I'm sorry, *my hands are tied*. I didn't have anything to do with this. She said *it was all coming from over there* and, with that, she pointed towards *Mr. Shores' office*. [Emphasis added.]

The evidence reveals that Johnson also informed Heather about Shores' role. The Company introduced into evidence, without limitation, Heather's October 27, 1992 pretrial affidavit, in which she swore (R. Exh. 29 p. 3, par. 9):

> I have asked Elaine Johnson how long this is going to continue and she replied that she didn't know. I asked her whose idea this was and Elaine Johnson indicated that *the orders came from Jack Shores' office*. [Emphasis added.]

I reject the contention in the Company's brief (at 82) that the realignment of Meyer's duties ''worked out very satisfactorily.''

d. *Heather's clerical work*

Since Linda Heather was employed as an artist in 1983, her duties have been ''to do advertising layout design, sales promotions designs, spec layouts for sales staff and other assigned duties having to do with art or graphic design work'' (R. Exh. 29 pp. 1–2; Tr. 1431, 1443–1445, 1467–1473).

Before the September 29, 1992 changes in Meyer's assignments, Heather was working full time as the staff artist. She had never worked on any dummy sheets, even in January and February when Meyer was absent about 4 weeks because of illness. (Tr. 1212–1214, 1250–1252, 1473–1475, 1504–1505, 2277).

Since October 6, 1992, Heather has continued reporting to work at 8:30 a.m. But instead of working on ad design layouts for the outside sales representatives, she has spent most of her time working on the newspaper dummy sheets until 10 a.m., when Meyer arrives. The dummy sheets for the next day's paper are needed in composing and editorial by 11 a.m., when the current day's paper goes to press. (Tr. 1197.)

Because Heather was performing this clerical work in the morning, as she credibly testified (Tr. 1453–1454), the outside sales representatives

> adjusted to the fact that I was no longer *Linda the artist*, I was *Linda the clerk*. Now, I know they need me and a lot of times I'm interrupted. And I'll be working on the dummies and they come and they will lay everything out in front of me [on her drawing board] on top of everything I'm working on, their ads and say, ''Linda, I need help.''
>
> And I say, ''Okay, lay it here . . . 10 o'clock I'll become *Linda the artist*.'' [Emphasis added.]

In addition, Heather has had to prepare dummy sheets in the afternoon. Meyer no longer works in the advertising department on Tuesday afternoon (after 12:30) and no longer works the hours of 9 a.m. to 5:30 p.m. in the advertising department on Wednesday. As a result, the dummy sheets for both the Weekender and Market Basket must be prepared on Wednesday afternoon. Heather prepares the Market Basket dummy sheets while Meyer prepares the Weekender dummy sheets. (Tr. 1454, 1504–1505.)

Heather credibly testified on cross-examination (Tr. 1475–1477):

> Q. When you come in in the morning, now if you have some ads that need to be dealt with because there's a deadline, what do you do first?
>
> A. First thing I do is I look to see what I have. Then I go back to Composing and I say, ''You are missing these ads,'' and I tell them what the ads are. I said, ''As soon as I get done with the dummy, I will be working on these ads. Now, before you even start searching and looking for these ads, these ads are laying on my drawing board.''
>
> Q. In terms of priority, which comes first?
>
> A. I don't know. Sometimes it's like between the chicken and the egg. I have to have the dummies done. I have to have the ads done. . . . [T]he dummies, basically, have to be done because as soon as [Editorial and Composing are] done with that [day's] paper, Editorial is working on the next day and also is Composing, laying out the next day. . . . [O]n some occasions when I am really so far behind, the dummies have to be let go . . . till Virginia gets in at 10 o'clock because I have too many ads. If I have two or three ads, then they're going to wait till 10 o'clock. If I have some more that are more complicated and they need proofs that the salesmen have to get out, then the paper has to wait and the whole . . . paper [for the next day] has to wait till the dummies get done.
>
> Q. Okay. So in terms of priorities, you can do dummying and you can obviously lay out the ads. Virginia Meyer can only do the dummying and she can't lay out the ads?
>
> A. She can't lay out ads.

Heather later credibly testified (Tr. 1509–1510):

> I've just been shuffling constantly back and forth, back and forth, trying desperately to get both jobs done. . . . [M]y artist duties have been really suffering trying to get that done on deadline.
>
> . . . .
>
> I've gone to Elaine Johnson many times and said, ''Elaine, I can't handle this. I have too much to do. What am I to do?''
>
> And she just said, ''Try to work faster.''

Without any supporting evidence, the Company contends in its brief (at 82) that Heather's duties ''left her with a fair amount of unproductive time.''

I consider the contention frivolous.

e. *Defenses and concluding findings*

The Company's contends in its brief (at 78–79) that (1) preparing the dummy sheets was Meyer's primary duty, (2) in Meyer's absence in parts of January and February, ''it was *discovered*'' that either Elaine Johnson (before her pro-

motion) or Linda Milnes (Shores' secretary) performed this and ''*most* of Meyer's other duties *before lunchtime*,'' and (3) Shores concluded that ''Meyer has some time available that could be used for switchboard duties between 4:30 and 6:30 p.m.'' and that ''Linda Heather, the artist, had some time available and could be trained to back up the 'dummy' work and other duties that Meyer was performing'' (emphasis added).

This is obviously an attempt to reconcile defense witnesses' conflicting testimony. Moreover, the Company makes no attempt to explain why, if these assertions were true, it made no mention of the ''discovery'' for 7 months, from January and February until September 29, 1992, when it realigned the jobs. The evidence is undisputed, as Meyer credibly testified, that ''I have never been criticized'' for being slow, and ''in fact, I've been told a couple of times I've been doing a good job'' (Tr. 1252).

Shores first gave positive, unequivocal testimony that he was familiar with Meyer's duties; that in Meyer's absence, either Johnson or Milnes performed *all* her duties; and that ''They always had *everything* done before lunch'' (Tr. 2506–2507, 2617). This would mean that Johnson or Milnes, in a half day, would have performed the same work that Meyer performed in a 7-1/2-hour day, including the preparation of dummy sheets for the Market Basket, which ''didn't deadline until after 4:30'' on Wednesday afternoon (Tr. 2296).

Shores then began to equivocate and testified that ''Far as I know'' Johnson (or Milnes) did all Meyer's work. Next, he admitted knowing that Johnson was not doing all of it, testifying that not all the tear sheets were mailed. ''I know [outside sales representatives] were pulling some of their own tear sheets. I saw Vivianne Greene doing some of her own.'' Then Shores admitted, ''No, I do not know if she was doing all of Virginia Meyer's work.'' (Tr. 2618.)

In fact, as Meyer credibly testified (Tr. 1214):

> When I'm off ill or when I've been on vacation in the past, they do only what is absolutely essential to get that day's paper out. The tear sheets are stacked up just like they are right this minute, and I'm expected to clean this mess up when I return.

Johnson, when called as a defense witness, initially testified that when she filled in for Meyer, dummying the paper, she would do it ''some days [in] a little bit less time and some days a little bit more time'' (Tr. 2246). Later she claimed that ''Just about, yes,'' she was doing in ''half the time'' exactly ''the same work'' that Meyer was doing in 7-1/2 hours (Tr. 2250). Finally she testified, ''I don't think it would be fair to say half the time'' and claimed, ''I felt that there was about two hours in her day, at least two hours in her day, that could have been more productive.'' (Tr. 2251.) She did not impress me as being a truthful witness.

I discredit, as fabrications, Shores' claim that Johnson or Milnes performed all Meyer's duties before lunch and Johnson's claim that she was performing ''Just about'' all Meyer's duties in half the time.

The Company contends in its brief (at 79) that when Shores decided to assign circulation department work to Meyer, Shores ''concluded that Linda Heather, the artist, had some time available . . . to back up the 'dummy' work and other duties that Meyer was performing.'' There is, however, absolutely no evidence that Shores either concluded, or had reason to conclude, that Heather had the time available.

Moreover, even if Shores did in good faith decide that both Meyer and Heather had the time available to perform the additional duties, the credited evidence clearly shows that the Company was aware after the first week that the realignment of duties was not a satisfactory arrangement for Meyer, Heather, and the outside sales representatives.

There was hardship particularly on Meyer, placing her under stress from the excessive workload, as found. There was no way that Meyer could spend 13 hours a week performing the entry-level work at the front counter and timely perform all her assigned advertising department duties in the remaining 24-1/2 hour in the workweek. Although Meyer was relieving one district sales manager from having to spend 2 hours at the front counter each evening, the outside sales representatives were not only being required to perform some of Meyer's clerical tear sheet work, when providing their own tear sheets, but they were being deprived of needed help from staff artist Heather in making ad layout designs when she was performing Meyer's clerical dummy work.

Under these circumstances, I reject the Company's contention (at 82–83) that ''the reassignment of hours as well as duties was based upon valid business reasons'' and ''was consistent with maximizing the efficiency of the newspaper's operations.''

After considering all the evidence, I find that the General Counsel has made a prima facie showing that Meyer's and Heather's vocal support of the Union was a motivating factor in the Company's decision to change their job duties and to assign them less desirable job duties. I also find that the Company has not met its burden of proof that it would have made the changes in the absence of their union support.

I therefore find that the Company, by changing the job duties of Virginia Meyer and Linda Heather on September 29, 1992, discriminated against them in regard to condition of employment to discourage membership in the Union, violating Section 8(a)(3) and (1).

I further find that the Company was seeking to induce these union supporters to resign, as it had earlier caused union supporters Melanie Matthews and Carol Rohr to resign, in retaliation for their refusal to sign the antiunion petition. Because doing so would not alter the remedy, I deem it unnecessary to rule on the further allegation that the changes in job duties were made unilaterally in violation of Section 8(a)(5).

4. Discipline of Thomas Prusha

On April 29, 1992, Managing Editor Kevin Coffey gave staff photographer Thomas Prusha a copy of a memo to the file, stating in the first paragraph (G.C. Exh. 81):

> Tom Prusha today was given a verbal warning that his continued failure to follow assignments and/or continued submission of sloppy photo work may result in discipline up to and including termination.

The day before, Prusha had taken color photos to accompany a high school prom story in the paper. On April 29, Coffey advised Prusha that the best of the color pictures (G.C. Exh. 82) was not satisfactory and asked him for the backup photo in black in white, as required for all color as-

signments. Prusha said he had not taken one. As result, the story ran without an accompanying photo. (Tr. 1560–1561, 2025–2029.)

Kelly gave Prusha a verbal warning for this incident and also for his submitting a black and white photo that was ''printed off-center on the paper with portions of two edges of the image missing,'' requiring extra work at the copy desk before it was used in that day's paper (Tr. 2030–2031; G.C. Exhs. 83, 84).

In addition, as Coffey testified, he gave Prusha a further verbal warning for insubordination when Prusha said he wanted a copy of the memo to the file when it was completed, because ''You have to keep a file when you can't trust people'' (Tr. 2032). The memo covered all three incidents that day.

Earlier in the year, Coffey had criticized Prusha for other instances of ''failure to follow assignments,'' without writing memos to the file (Tr. 2041). One instance was an assignment on January 29 to ''get a shot of the students in prayer'' during Catholic Schools Week. Prusha instead submitted a picture of students standing at a church railing, looking at the camera. (Tr. 2038–2039; R. Exh. 33.) Another was an assignment on April 10 (less than 3 weeks before the color-photo incident). Although Prusha was assigned to get an ''action shot'' of students at a gifted students seminar, he submitted a photo of a girl, looking at the camera. (Tr. 2035–2036; R. Exhs. 34–36.)

The General Counsel argues (in br. at 42) that there were extenuating circumstances surrounding the color-photo incident, and I agree, but that fact does not fault the Company's decision to give Prusha a verbal warning for his failure to follow instructions to take a backup photo in black and white. Prusha finally admitted on cross-examination, ''Yes, that is correct,'' he ''forgot to do so'' (Tr. 1564).

The General Counsel also argues (at 43) that the off-center picture was used in the paper after being cropped to correct the error and that there was only a minor delay caused by the error. But there is no suggestion that this incident, as so-called ''sloppy photo work,'' would have alone merited a verbal reprimand. The incident occurred on the same day as the serious failure to follow backup instructions and after a recent failure to follow the assignment for an action shot at the seminar. (Tr. 2042.)

Concerning the verbal warning for insubordination, I credit Coffey's testimony about the incident and discredit Prusha's denial that he made the statement that ''you have to keep a file when you can't trust people'' (Tr. 1538).

I find that the General Counsel has failed to make a prima facie showing that Prusha's union support was a motivating factor in the Company's decision to discipline him. I therefore find that the 8(a)(1) and (3) allegations must be dismissed. In the absence of any supporting evidence, I find that the 8(a)(4) allegation must also be dismissed.

Concerning the March 27 public prounion rally that Prusha photographed ''as a regular news story,'' taking pictures ''in the parking lot across the street'' of people speaking and marching—one of the pictures being published in the paper the next day (Tr. 1518; G.C. Exh. 80), the complaint alleges that the Company by Gorsich ''took photographs of employees in order to unlawfully engage in surveillance of employees' union activities.''

I agree with the Company's contention in its brief (at 54–55) that the Company ''is a daily newspaper and the rally was a newsworthy event.'' Moreover, there had been some unexplained vandalism at the plant, and Gorsich was asked to take video pictures in the event vandalism or problems occurred (Tr. 1019, 2449; R. 71).

Under these circumstances I find that the General Counsel has failed to prove the allegation and that it also must be dismissed.

5. Change in scheduling vacations

The nonclerical staff (or ''field staff'') in the circulation department consisted of five persons: Circulation Director John, Circulation Marketing Director Gorsich, and District Sales Managers Adams, Bartlett, and Primack.

The alleged unlawful change in scheduling vacations involves the insistence by Primack, the senior of the three employees, that the Company honor her seniority and permit her to take a week of her vacation in the 1992 Christmas period, even though Gorsich also chose that time on the posted vacation schedule (R. Exh. 40).

The vacation provisions in the collective-bargaining agreement (which was in effect until the Company withdrew union recognition on March 2) provided (G.C. Exh. 2, art. 9):

> Section 3. Vacation periods for individual full-time employees shall be arranged by the [Publisher] with the rule of seniority followed as far as practicable.
>
> Section 4. Vacations may be arranged at any time during the year that is satisfactory to both the [Publisher] and the employee.

Both Primack and Gorsich took vacations during the Christmas period in 1991, and both she and John took vacations during the week of June 22, 1992. Primack credibly testified she does not recall being told after she and John returned from their June vacations that there had been ''some coverage problems.'' She recalled that it was sometime that fall when Gorsich told her that ''there could not be two people in the same department off at the same time.'' Gorsich then explained that John got in trouble for being off from work the same week that she was off. (Tr. 1609–1612, 1646.)

When Gorsich spoke to her about changing her 1992 Christmas vacation, Primack insisted, ''I don't understand why we can't take [our vacations] at the same time we did last year.'' She finally agreed to reschedule her vacation. Then, wanting to take the vacation over two weekends (not on a third Saturday when she was scheduled to work), she chose the day before and after Thanksgiving for the first long weekend—not noticing on the vacation schedule that Gorsich had also selected Thanksgiving week to be absent. (Tr. 1612–1613.)

When Primack sought John's approval, John said, ''Wait a minute, go out and check that board [where the vacation schedule was posted] to make sure that Mike doesn't have Thanksgiving.'' She checked and told John, ''Oh, no, he does have it off.'' John said ''it's only going to affect a couple of days. . . . Let me talk it over with Mike and I'll get back with you.'' (Tr. 1613–1614.)

Later in response, after asking Primack if she had anything planned on Thanksgiving week, Gorsich wrote her a memo (G.C. Exh. 93), stating that she had twice selected conflicting vacation dates, ''We can't afford to have more than one person in the department on vacation at any one time,'' and please reschedule her vacation on days that are not in conflict. Still protesting, Primack chose a week in December. (Tr. 1614–1616.)

The complaint alleges that the Company ''refused to permit Sheri Primack to take her previously approved vacation'' because she assisted the Union and ''gave testimony to the Board in the form of an affidavit'' and that it unilaterally changed its vacation policy, violating Section 8(a)(1), (3), (4), and (5).

To the contrary, I find that there is no showing that the Company was unlawfully motivated. I agree with the Company's contention in its brief (at 66) that the new policy was reasonably necessary to ensure adequate coverage of the field work. I also agree that the Company's handling of the problem falls within the rights it retained under the management-rights clause in the previous collective-bargaining agreement, providing (G.C. Exh. 2, art. 5) that ''All the rights, powers and authority now or previously exercised by the [Publisher] are specifically and exclusively retained by the [Publisher] except as modified by this Agreement.''

I therefore find that the 8(a)(1), (3), (4), and (5) allegations must be dismissed.

6. Denial of merit raise

On August 5, 1992, 2 months after the Company unilaterally assigned reporter Douglas Bennett to work half time for another newspaper, the Alliance Review (as discussed later), Bennett asked Editor James Davis for a merit raise. As Bennett credibly testified (Tr. 1382–1384), he told Davis

> I had been working awfully hard for both Alliance and [the Company] and it was getting [time] to sign up for graduate school classes for the fall again. . . . I had been producing so many news stories for both papers that I felt a merit raise was justified.
>
> . . . .
>
> A. [Davis] said he'd check into it and get back to me.
>
> . . . .
>
> A. [After about 2 weeks, Davis said] the union has filed a grievance because of the situation with Alliance . . . we can't give you a raise because of the grievance.
>
> . . . .
>
> A. He said it would look like they were trying to buy their way out of this grievance, was the explanation he gave me.

The grievance, which the Union sent to Publisher Shores on July 29, 1992 (G.C. Exh. 14), read as follows:

> Please be advised that the Guild wishes to grieve a unilateral change in working conditions in that you have directed a reporter employee to perform duties for another employer.
>
> Please notify me by Wednesday, August 5, as to when we may schedule this meeting.

The complaint alleges that the Company coercively told an employee he could not receive a requested merit raise because the Union attempted to file a grievance on his behalf. The Company admits in its brief (at 70) Davis' ''refusal to grant the merit raise.'' It contends, however, that Davis' ''perceived incapacity or reluctance'' to risk ''further liability'' was justified.

The Company was refusing to accept the grievance. It offers no explanation of how its giving reporter Bennett a merit raise to compensate him for the additional work he was doing, could subject the Company to ''further liability.'' I reject the defense.

I find that Davis' telling Bennett that the Union's filing the grievance was the reason for his ''refusal to grant the merit raise'' constituted coercive conduct that reasonably tended to discourage protected concerted activity by the employees and violated Section 8(a)(1).

7. Refusal to publish column

For years, the Company paid reporter/columnist Dennis Highben (a former union officer) $16 a week extra for a writing a weekly column. On December 2, 1992, Highben submitted for the December 5 issue of the Weekender, a column with the heading, ''Words from Soldier's '42 Christmas Letter'' (G.C. Exh. 16).

On December 4, reporter Roland Dreussi (the employee ''editor'' of the Weekender), noticed that ''the column had been pulled.'' On December 7, Dreussi asked Editor James Davis if ''he had pulled it because he had wanted to run it closer to Christmas, or if he had just pulled it. He said that he had just pulled it'' and ''it didn't concern'' Dreussi. (G.C. Exh. 16; Tr. 190–194, 1743, 1756.)

Although not mentioned in this conversation, the Union on December 1 filed a charge against the Company in Case 8–CA–25050, alleging in part that the Company, since July 1992, had ''denied opportunities for overtime pay'' to Highben. The charge was served on the Company on December 3, the day before Dreussi's conversation with Davis about the column being pulled (G.C. Exhs. 1N, 1(O)). Davis did not testify.

On December 17, Highben asked Davis ''What's the story with my column?'' Davis responded that he did not want to talk about it there in the office, we'd talk about it later. Highben said, ''[A]t least what's the story with the column that we have hanging that's in the system. Is it going to run or not?'' Davis answered that we don't want to talk about it right now, we'd talk about it later. Davis never gave any reason for not publishing the column. (Tr. 195–197.)

Highben waited until Christmas for the column to be published and then, on December 30, submitted another column to be published on January 2, 1993. The Company did not publish it until January 30, 8 days after being served with a new charge in Case 8–CA–25153, alleging that the Company discriminated against Highben by canceling publication of his weekly column. The Company then resumed the regular publication of Highben's column until he resigned. (G.C. Exhs. 1T, 1U; Tr. 199–200, 202, 220–224.) The evidence does not disclose whether the Company's unfair labor practices were a factor in the Union's loss of this, another union supporter in the bargaining unit.

The General Counsel contends (in Br. at 53) that ''An inference should be drawn that [the Company] was motivated by the filing of the charge in Case 8–CA–25050,'' adding:

> Although some of the above allegations seem minor, when taken as a whole, they demonstrate [the Company] petty nastiness in retaliating against known union supporters. Clearly, [the Company] wanted to rid itself of the Union and it made union supporters suffer in numerous, coercive ways.

The Company, which admits in its brief (at 85–86) that Highben had been a union officer and ''had a history of being an active member in the Guild,'' offers no defense other than to contend that ''since a prima facie case of discrimination has not been established, [the Company] was not obligated to provide rebuttal evidence and offer such a reason.'' I disagree.

I find that the General Counsel has made a prima facie showing that Dennis Highben's support of the Union and the filing of the December 1 Board charge were motivating factors in the Company's refusal to publish Highben's December 5, 1992 column and its refusal until January 30, 1993, to resume publishing the weekly column. The Company having failed to meet its burden of proof that it would have failed to publish the columns in the absence of the protected concert activity, I find that it violated Section 8(a)(1), (3), and (4).

G. *Unilateral Changes in Wages and Conditions*

1. Unscheduled wage increase

After unlawfully repudiating the agreement with the Union and withdrawing recognition, the Company made a number of unilateral changes that are alleged to be refusals to bargain, made to undermine and discourage union support. One of these changes was an unscheduled general wage increase. It was announced on March 23, granted March 30, and made effective March 22, the day the Company withdrew its recognition of the Union (R. Exhs. 68, 69).

In its defense, the Company argues in its brief (at 62): ''It is axiomatic that an employer that has lawfully withdrawn recognition from a union is thereafter not obligated to bargain with that union.'' Having found that the Company *unlawfully* withdrew recognition, I reject this defense. The Company also argues that the wage increase was the same increase that it proposed in negotiations, but does not contend that there was an impasse in the negotiations.

I find that the Company unlawfully granted the unilateral March 30 general wage increase in violation of its duty to bargain with the Union, violating Section 8(a)(5) and (1).

2. Changes in working conditions

a. *Prior contractual provisions*

Before the Company withdrew recognition from the Union, one-third of the bargaining unit employees (11 of the 33) were reporters. Besides photographer/reporter Thomas Prusha, they were Douglas Bennett, Stephen Doerschuk, Margaret Dottavio, Roland Dreussi, Dennis Highben, Michael Keating, Teresa Melcher, Larry Neeley, Joseph Shaheen, and Marla Fox Stanford. (Tr. 893A–894A, 897A–898A, 912A, 1743–1745.)

As estimated by Managing Editor Coffey, between 30 and 40 percent of the stories in the newspaper are derived from wire services (Associated Press and Scripps-Howard) and about 5 or 10 percent from ''correspondents,'' who are independent contractors, referred to as ''contributors on a space basis'' in the previous collective-bargaining agreement (Tr. 914A, 952A–955A, 2047–2048, 2053).

The contractual provisions setting out the Union's jurisdiction over the reporters' work (unchanged in the December 4 tentative agreement on noneconomic issues, G.C. Exh. 49) were as follows (G.C. Exh. 2, pp. 3, 18):

> ARTICLE 4, JURISDICTION
>
> Section 1. It is understood and agreed that the jurisdiction of the Guild shall be:
>
> (a) The *kind of work presently performed* within the unit covered by this Agreement;
>
> (b) Any kind of work similar in nature, or performing similar functions, as the kind of work presently performed in said unit; and,
>
> (c) Any other kind of work assigned to be performed within the covered unit.
>
> . . . .
>
> ARTICLE 23, MISCELLANEOUS
>
> . . . .
>
> Section 5. None of the provisions of the Agreement shall apply to *contributors on a space basis* whose products such as news stories, feature stories, art work, photographs, etc., are purchased and whose working time is not controlled by the [Publisher]. [Emphasis added.]

There was no provision limiting the Company's use of stories from the wire services.

For many years there had been an ongoing dispute between the Company and the Union over reconciling these two seemingly conflicting sections in the agreement. The Union ''felt the correspondents have infringed upon our bargaining unit work.'' In the December negotiations for a tentative agreement on noneconomic issues, the Company proposed an amendment ''to allow correspondents to do bargaining unit work,'' but the Union rejected the proposed amendment. The Company and Union reached the tentative agreement without any clarification to resolve the dispute. (Tr. 958A, 963A–965A.)

Until the Company repudiated the prior agreement on March 2, it assigned all the news stories (not derived from the wire services) to either the bargaining unit reporters or the approximately eight correspondents. The evidence is undisputed that the Company had never published non-wire-service stories from other newspapers or assigned its own reporters to cover stories for other newspapers. (Tr. 977, 913A, 962A, 970A–972A, 1822, 2053.)

Thus, the reporters were employed under working conditions that included exclusive employment for the Company, with jurisdiction over all stories not assigned to correspondents or derived from wire services.

b. *Unilateral changes*

While refusing to recognize the Union, the Company made two changes in the reporters' working conditions, taking advantage of the nonunion operation to change the reporters' status as employees working exclusively for the Company and being assigned to cover all stories not assigned to correspondents or derived from wire services.

The first change occurred on June 8, 1992, when the Company canceled some of reporter Douglas Bennett's regularly assigned duties and required him to work half time for the Alliance Review, a newspaper on the east side of the county. Under this arrangement, he normally reports to work daily at the Company's plant, but the Company requires him to take assignments and directions on Alliance work directly from the Alliance editor and city editor. (Tr. 1360–1368, 1385–1395, 1403–1411, 1415–1425, 1741, 2009–2015, 2020–2022, 2053–2054; G.C. Exhs. 69–78.)

The Union submitted a grievance ''to grieve a unilateral change in working conditions,'' but the Company made no response, refusing to accept the grievance (G.C. Exh. 14; Tr. 71).

On October 26, 1992, the Company made a further change in the reporters' working conditions. The change resulted in the loss that morning of an assignment to a bargaining unit reporter to cover a front-page story, a speech being made by First Lady Barbara Bush in nearby Canton. The Company had already assigned Bennett to cover another front-page story, the trial of a Rev. William Brink for sexually molesting girls in a youth home. (Tr. 972–973.)

The Alliance telephoned Editor James Davis that morning, seeking to locate Bennett so that it could assign him to cover the Bush speech for the Alliance.

Both Davis and Managing Editor Coffey asked reporter Marla Stanford if she could ''sit in for [Bennett] that day.'' Having covered the Brink trial the week before, she offered to cover the morning's testimony by Brink's teenage bride ''because it was so important.'' As she credibly testified, she had done all the investigative work, had already read the bride's affidavit, and ''felt that I had enough background that I would be able to cover the story, and be able just to walk in.'' But after further consultation (apparently by Coffey or Davis with the Alliance), Davis told her, ''Never mind, now the game plan's changed,'' that ''Somebody from Alliance was going to go cover the Bush speech and Doug was going to go to the trial.'' (Tr. (Tr. 973–976, 979A–983.)

Thus, the Company decided to reaffirm Bennett's assignment to cover the Brink trial and not to assign a reporter to cover the Bush speech. It instead arranged that the Alliance would assign a reporter to cover the speech for both the Alliance and The Independent.

On the front page of the October 27 edition of The Independent (G.C. Exh. 59), the Brink story carried a byline, ''By Doug Bennett, Independent Staff writer.'' Also on the front page, the First Lady story carried a byline, ''By George Salisbury, Alliance Review Writer.'' This was the first time the Company ever withheld an assignment from a reporter in the bargaining unit and published a non-wire-service story covered by a reporter from another newspaper. (Tr. 973A–978A, 2016.)

The complaint alleges that the Company's June 8, 1992 requirement that reporter Bennett ''work for another employer, the Alliance Review'' and its October 26, 1992 change in policy regarding ''assigning news stories to nonemployees'' relate to conditions of employment in the bargaining unit, that they are mandatory subjects for bargaining, and that the Company made the changes without prior notice to the Union and an opportunity to bargain, violating Section 8(a)(1) and (5).

c. *Defenses and concluding findings*

The Company contends in its brief (at 73) that the ''terms and conditions of [Bennett's] employment *[did not] change* [emphasis added] as a result of this arrangement with the Alliance Review'' and (at 71) that it was merely ''selling stories to the Alliance Review.''

I reject these contentions as frivolous. Clearly, the assignment of Bennett to work half time for the Alliance Review, under the direction of the Alliance editor and city editor, changed the bargaining unit reporters' condition of employment, that they would work exclusively for the Company.

The Company also contends (at 77) that ''there is no evidence that any employee . . . lost any opportunity to work as a result of [the Company's] using the Barbara Bush story.''

In making this contention, the Company ignores the undisputed testimony that it decided against assigning reporter Stanford to cover the Brink story, as Editor Davis and Managing Editor Coffey had discussed with her when the Alliance sought to assign Bennett to cover the Bush speech. By arranging with the Alliance for it to assign an Alliance reporter, instead of Bennett, to cover the Bush speech for both the Alliance and The Independent, the Company was in a position to leave Bennett on the Brink assignment. Davis told Stanford, ''Never mind, now the game plan's changed.''

Contrary to the Company's contention that none of the bargaining unit employees ''lost any opportunity to work,'' Stanford lost the opportunity to get the preferred assignment to cover the Brink trial or, if Bennett retained his assignment to cover the Brink trial, a bargaining unit reporter ''lost the opportunity to work'' on the assignment to cover the Bush speech. The Company was assigning only one instead of two reporters to cover the two front-page stories.

This, of course, changed the bargaining unit reporters' condition of employment, that they would be assigned to cover all stories not assigned to correspondents or derived from wire services. If the Company could, at will, ignore the bargaining unit reporters' jurisdiction over all these assignments and arrange for others, such as reporters for competing newspapers, to cover its stories, the Company could decimate their jurisdiction.

I therefore reject the Company's contention (at 78) that ''the evidence is simply insufficient to establish that it unilaterally changed working conditions.''

Having rejected the Company's defenses as lacking merit, I find that the Company, without prior notice to the Union and without an opportunity for the Union to bargain, changed conditions of employment for reporters in the bargaining unit, violating Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

1. By vesting employee Rebecca Thompson with apparent authority to act as its agent, the Company is responsible for her solicitation of employees to sign an antiunion petition to get rid of the Union and accordingly has engaged in unfair

labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By coercively encouraging employees to sign the antiunion petition, the Company by Publisher Jack Shores violated Section 8(a)(1).

3. By coercively interrogating employees about signing the petition, soliciting them to sign it, and warning employees that they could not refrain from supporting either the Company or the Union during the antiunion campaign, the Company by Circulation Director Eugene John and Circulation Marketing Director Michael Gorsich violated Section 8(a)(1).

4. By threatening employees with reprisals and by threatening an employee with discharge to encourage them to sign Thompson's petition or form letter opposing the Union, the Company by John violated Section 8(a)(1).

5. By engaging in bad-faith bargaining, repudiating the collective-bargaining agreement, and withdrawing its recognition of the Union as the bargaining representative of the employees in an appropriate bargaining unit, the Company violated Section 8(a)(5) and (1).

6. By discriminatorily disciplining Melanie Matthews and Carol Rohr on February 21, 1992, causing them to resign, the Company violated Section 8(a)(3) and (1).

7. By discriminatorily changing the job duties of artist Linda Heather and advertising dispatch clerk Virginia Meyer on September 29, 1992, and assigning them less desirable job duties to induce them to resign, the Company violated Section 8(a)(3) and (1).

8. The Company did not discriminatorily discipline Thomas Prusha or engage in unlawful surveillance at a public prounion rally where he was assigned as the photographer.

9. The Company did not unlawfully require an employee to change her scheduled vacation.

10. By telling Douglas Bennett that the Union's filing a grievance was the reason for its ''refusal to grant the [requested] merit raise,'' the Company by Editor James Davis violated Section 8(a)(1).

11. By refusing to publish Dennis Highben's weekly column from December 5 to January 30 because of his union support and the Union's filing a Board charge on his behalf, the Company by Davis violated Section 8(a)(1), (3), and (4).

12. By unilaterally granting the employees a general wage increase after unlawfully withdrawing its recognition of the Union, the Company violated Section 8(a)(5) and (1).

13. By requiring a reporter to work for another newspaper and to take assignments and directions from its editor and city editor, and by arranging for the other newspaper to assign its reporter to cover a story, depriving a bargaining unit reporter of an assignment to cover the story, the Company unilaterally changed conditions of employment for bargaining unit reporters, violating Section 8(a)(5) and (1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully withdrawn its recognition of the Union and repudiated the collective-bargaining agreement, must reinstate the December 4, 1991 tentative agreement for purposes of good-faith bargaining.

Having discriminatorily disciplined employees Melanie Matthews and Carol Rohr, causing them to resign in its campaign to get rid of the Union, the Respondent must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of the resignations to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having discriminatorily changed job duties of employees Linda Heather and Virginia Meyer and assigned them less desirable job duties to induce them to resign, the Respondent must restore their former job duties.

Having refused to grant Douglas Bennett a merit raise because the Union filed a grievance on his behalf, the Respondent must grant the withheld raise retroactive to the date the raise was refused, plus interest.

Having discriminatorily refused to publish Dennis Highben's weekly column, the Respondent must make him whole, plus interest, for his lost earnings for the weeks he submitted columns for publication and the weeks he would have submitted columns in the absence of the discrimination.

[Recommended Order omitted from publication.]